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THE judiciary has not, we are glad to notice, been lost sight of in the recommendations lately made to congress. The president has recommended an increase in the salaries paid to the district court judges, which are at present grossly inadequate, in many cases absurdly so. Judicial salaries in the federal courts are so low that it is difficult to retain experienced judges on the bench. We trust that congress will be brought to act promptly in this matter, which is of grave importance, in the direction of effective administration of justice in the federal courts.

SOME time ago a regulation imposing a license tax upon commercial travelers was adopted in the District of Columbia. This regulation was subsequently held unconstitutional by the courts. After the rendering of the final decision, suits were brought by a number of travelers to recover the amounts which had been paid to the authorities of the District. The question whether the travelers who had been unjustly taxed could recover was brought before the courts, and a decision has been rendered to the effect that the District authorities will be obliged to refund from the treasury to every commercial traveler the amount of tax collected during the last three years, recovery for the period before that being barred by the statute of limitations, and being only possible through act of congress. Quite a number of the States imposed such tax or license upon commercial travelers, which were, however, in time, declared unconstitutional and illegal. It would be interesting to know whether, and we can see no reason why the same rule of restitution should not be held to apply to illegal exactions so made and secured by the States. It is, at least, a matter of surprise that no effort in this direction has, so far as we know, been made.

THE decision by the New York Supreme Court of what is popularly known as the "electric wires case" will give relief to many citizens of the larger cities where the dangers incident to the use of electric wires have become a matter of serious concern. The suit was an injunction against the New York Board of Electrical Control to restrain them from removing certain overhead wires, which by reason of defective insulation were declared to be dangerous. The court in reversing the decision of the lower court which had sustained the injunction, took the ground that where parties are conducting a business by means of an apparatus and a force which, unless properly controlled, subjects every passer-by in the streets of a city to the danger of death, they are bound, in the prosecution of their business, to use the highest degree of diligence, and if it is impossible for them to conduct their business without subjecting passers-by to danger, although without negligence on their part, then it is doubtful whether the legislature even could, without closing the streets as a public highway and making provision for compensation to all parties damaged thereby, confer authority for the conduct of such a business in the public streets of a city, because it would be giving the streets up to a purpose for which they have never been dedicated.

Whatever rights the electric companies acquired by legislative grant are subject to the dominant law of public safety, and it must be assumed that such rights were secured with the knowledge of this controlling principle. The legislature has no power to violate it, and consequently none to authorize any enterprise to be conducted in the public streets by the use of a death dealing factor, unless the conditions imposed surrounding and controlling it are such as to secure the public safety, not for a time, but for all time during its use. In other words, it was declared that a dangerous wire is a public nuisance, and that it is the duty of the board of public works to abate it by removing it at the earliest possible moment. It need not be said, that this is a case of very great interest, and while the principles of law laid down as to the doctrine of nuisances are not new, the application of these principles to the new state of facts gives especial importance and value to the decision.

NOTES OF RECENT DECISIONS.

THE effect of non-compliance by a passenger with one of the conditions recited in his railroad ticket was considered by the Supreme Court of the United States in Boylan v. Hot Springs Ry. Co., 10 S. C. Rep. 50. There plaintiff purchased a ticket containing an express provision that it should be stamped and signed by defendant's agent at the place of destination before it would be received for return passage. It was held that plaintiff not having attempted to have the ticket stamped, as the unstamped ticket gave plaintiff no right to a return passage, and as he declined to pay fare, he cannot maintain an action sounding in contract for such ejection, and the exclusion of evidence as to the circumstances of his expulsion, and the consequent injuries, is not prejudicial to him. The court says:

The plaintiff did not have his ticket stamped at Hot Springs, or make any attempt to do so, but insisted on the right to make the return trip under the unstamped ticket, and without paying further fare. As he absolutely declined to pay any such fare, the fact that the conductor did not inform him of its amount is immaterial. The unstamped ticket giving him no right to a return passage, and he not having paid, but absolutely refusing to pay, the usual fare, there was no contract in force between him and the defendant to carry him back from Hot Springs. There being no such contract in force, there could be no breach of it; and, no breach of contract being shown, this action of *assumpsit*, sounding in contract only, and not in tort, cannot be maintained to recover any damages, direct or consequential, for the plaintiff's expulsion from the defendant's train. The plaintiff, therefore, has not been prejudiced by the exclusion of the evidence concerning the circumstances attending his expulsion, and the consequent injuries to him or his business. The case is substantially governed by the judgment of this court in Mosher v. Railway Co., 127 U. S. 390, 8 S. C. Rep. 1324, and our conclusion in the case at bar is in accord with the general current of decisions in the courts of the several States. See, besides the cases cited at the end of that judgment, the following: Churchill v. Railroad Co., 67 Ill. 390; Petrie v. Railroad Co., 42 N. J. Law, 449; Pennington v. Railroad Co., 62 Md. 95; Rawitzky v. Railroad Co., 40 La. Ann. 47, 3 South. Rep. 387. Nor was anything inconsistent with this conclusion decided in either of the English cases relied on by the learned counsel for the plaintiff. Each of those cases turned upon the validity and effect of a by-law made by the railway company, not of a contract signed by the plaintiff, and otherwise essentially differed from the case at bar. In Jennings v. Railway Co., L. R. 1 Q. B. 7, the by-law required every passenger to obtain a ticket before entering the train, and to show and deliver up his ticket whenever demanded. The plaintiff took a ticket for himself, as well as tickets for three horses and three boys attending them, by a particular train, which was afterwards divided into two, in the first of which the plaintiff traveled, taking all the tickets with him; and when the second train was about to start the boys were asked to produce their tickets, and, being unable to do so, were prevented by the company's servants from proceeding with the horses. An action by the plaintiff against the company for not carrying his servants was sustained, because the company contracted with him only, and delivered all the tickets to him; and Lord Chief Justice Cockburn, with whom the other judges concurred, said: "It is unnecessary to determine whether, if the company had given the tickets to the boys, and the boys had not produced their tickets, it would have been competent for the company to have turned them out of the carriage." In Butler v. Railway Co., L. R. 21 Q. B. Div. 207, the ticket referred to conditions published by the company, containing a similar by-law, which further provided that any passenger traveling without a ticket or not showing or delivering it up when requested, should pay the fare from the station whence the train originally started. The plaintiff, having lost his ticket, was unable to produce it when demanded, and, refusing to pay such fare, was forcibly removed from the train by the defendant's servants. The court of appeal, reversing a judgment of the queen's bench division, held the company liable, because the plaintiff was lawfully on the train under a contract of the company to carry him, and no right to expel him forcibly could be inferred from the provisions of the by-law in question, requiring him to show his ticket or pay the fare; and each of the judges cautiously abstained from expressing a decided opinion upon the question whether a by-law could have been so framed as to justify the course so taken by the company.

THE old doctrine of the English courts that the negligence of the driver of a vehicle is the negligence of its passengers met with a fresh repudiation at the hands of the Supreme Court of Pennsylvania in Dean v. Pennsylvania Ry. Co., 18 Atl. Rep. 718. There plaintiff by invitation of another, rode with him in his wagon. The act was one of kindness, and not for compensation. Plaintiff knew the locality well; knew that he was approaching a railroad crossing, and that a train was due. He sat with his back to the driver, approaching the crossing at a fast trot; and, though he might have seen his danger, he did not look, or warn the driver, or ask him to stop and listen, or take any precaution whatever. *Held*, that as plaintiff was himself negligent, he could not recover for injuries received in a collision with the train, but that had plaintiff not been guilty of negligence, the negligence of the driver could not be imputed to him. The court says:

But can the negligence of Fields be imputed to Dean? In Lockhart v. Lichtenthaler, 46 Pa. St. 151, it was held that where a passenger in a carrier vehicle is injured by a collision resulting from the negligence of those in charge of it and those in charge of another vehicle, the carrier only is answerable for the injury; and this case was followed by Railroad Co. v. Boyer, 97 Pa. St. 91, where the same rule was applied. The de-

cision in Lockhart v. Lichtenthaler was made by adopting the conclusion of the English courts in Bridge v. Railroad Co., 3 Mees. & W. 247 (1838), in the exchequer; Thorogood v. Bryan, 8 C. B. 115, 95 E. C. L. 114; and Cattlin v. Hills, *Id.* 123 (1849), in the common bench. These cases were followed in the exchequer in Armstrong v. Railway Co., 44 Law. J. Exch. 89 (1875), L. R. 10 Exch. 47. The principle upon which all these English cases appear to have been determined is that the passenger is so far identified with the carriage, in which he is traveling that want of care on the part of the driver will be a defense to the owner of the other carriage, that directly causes the injury. In Thorogood v. Bryan, which is the leading case, a passenger alighting from an omnibus was thrown down and injured by the negligent management of another omnibus; and it was held that an action would not be maintained against the owner of the latter if the driver of the omnibus in which the passenger was riding, by the exercise of proper care and skill, might have avoided the accident which caused the injury. The rule asserted is one of general application, no matter whether the conveyances are public or private, or whether the party injured is conveyed at his own request or at the request of the driver. In Lockhart v. Lichtenthaler, however, the rationale of the rule in Thorogood v. Bryan was not considered tenable. Indeed, the reasons assigned for it in the English cases were expressly rejected, and the liability of the carrier was put upon different grounds—the grounds of public policy. "I would say," says the learned judge, delivering the opinion of the court, "the reason for it is that it better accords with the policy of the law to hold the carriers alone responsible in such circumstances, as an incentive to care and diligence. As the law fixes responsibility upon a different principle in the case of the carrier, as already noticed, from that of a party who does not stand in that relation to the party injured, the very philosophy of the requirement of greater care is that he shall be answerable for omitting any duty—which the law has defined as his rule and guide, and will not permit him to escape by imputing negligence of a less culpable character to others, but sufficient to render them liable for the consequences of his own." It will be observed that as the reasons assigned for the rule in Lockhart v. Lichtenthaler extend only to cases in which the party is injured by the joint negligence of his common carrier and another, the rule has no application to cases where the injured party's conveyance is private; and this was the ground upon which Carlisle v. Brisbane, 113 Pa. St. 544, 6 Atl. Rep. 372, was decided. In that case the conveyance was private, the party injured being carried without compensation, and both of the negligent parties held to the same degree of care and diligence. The doctrine of Lockhart v. Lichtenthaler was therefore not applicable. The principle of Thorogood v. Bryan has been approved in some of the States, and in others it has been rejected as altogether indefensible. It has been recognized and sustained in Vermont (Carlisle v. Sheldon, 38 Vt. 440); in Wisconsin (Houfe v. Fulton, 29 Wis. 296; Prideaux v. Mineral Point, 43 Wis. 513; Otis v. Janesville, 47 Wis. 422, 2 N. W. Rep. 783); and in Iowa (Payne v. Railroad, Co., 39 Iowa, 523). On the other hand, the doctrine has been declared unsound and untenable by the Supreme Court of the United States in the very recent case of Little v. Hackett, 116 U. S. 366, 6 S. C. Rep. 391. The doctrine has also been disapproved and rejected in New York (Robinson v. Railroad Co., 66 N. Y. 11; Dyer v. Railway Co., 71 N. Y. 228; Masterson v. Railroad Co., 84 N. Y. 247); in New Jersey (Bennett v. Transportation Co., 36 N. J. Law, 225); Railroad Co. v. Steinbrenner, 47 N. J. Law, 161-171); in Maine (State v. Railroad Co., 38 Alb. L. J. 269); in Ohio (Transfer Co. v. Kelly, 36 Ohio St. 86 91); in Illinois (Railroad Co. v. Shacklet, 105 Ill. 364); in Kentucky (Turnpike Road Co. v. Stewart, 2 Metc. (Ky.) 119; Railroad Co. v. Case, 9 Bush, 728); in California (Tompkins v. Railroad Co., 66 Cal. 163, 4 Pac. Rep. 1165); in New Hampshire (Noyes v. Town of Boscawen, 64 N. H. 361, 10 Atl. Rep. 690); in Minnesota (Follman v. City of Mankato, 35 Minn. 522, 29 N. W. Rep. 317); in Michigan (Cuddy v. Horn, 46 Mich. 596, 10 N. W. Rep. 32); and in Maryland (Railroad Co. v. Hogeland, 66 Md. 149, 7 Atl. Rep. 105); while in Pennsylvania, as we have already stated, the rule has been but partially adopted, and the reasons given by the English courts have been expressly rejected. In some of the States as in Wisconsin, Michigan, and Iowa, a distinction would appear to have been taken between a public and a private conveyance; and, as an examination of the cases cited will show, it has been there held that when the injured person is riding in a private conveyance by invitation of the driver, and without compensation, the driver will be regarded as his agent, and upon that ground the negligence of the latter is imputed to the former. In Pennsylvania, New York, Ohio, Minnesota, and other States this doctrine of agency is expressly repudiated; and it is held that in such cases the driver's negligence cannot be so imputed. Thus it will be seen that the cases are conflicting. The rulings in England and in this country have been in the greatest confusion, which we think is attributable to the fact that the general rule of Thorogood v. Bryan, which for thirty-eight years was followed in England and in parts of this country, was rested upon wholly indefensible ground. The vain effort to sustain a rule of law which was at variance with reason and common sense has given rise to these various conflicting views and decisions.

The English Court of Appeals, however, in a very recent case, The Bernina, 12 Prob. Div. 58, decided in January, 1887, expressly overrules the case of Thorogood v. Bryan, and holds that one who is a passenger in a public conveyance does not identify himself with the conveyance, or the persons in charge of it, and that their negligence, direct or contributory, can in no respect be imputed to him. In the judgment of the court, Lord Esher, M. R., after an extended review of the English and American cases, said: "After having thus laboriously inquired into the matter, and having considered the case of Thorogood v. Bryan, 8 C. B. 115, we cannot see any principle on which it can be supported; and we think that, with the exception of the weighty observation of Lord Bramwell—though that does not seem to be a final view—the preponderance of judicial and professional opinion in England is against it, and that the weight of judicial opinion in America is also against it. We are of opinion that the proposition maintained in it is essentially unjust, and inconsistent with other recognized propositions of law. As to the propriety of dealing with it at this time in a court of appeal, it is a case which from the time of its publication has been constantly criticised. No one can have gone into, or have abstained from going into, an omnibus, railroad, or ship on the faith of the decision. We therefore think that, now that the question is for for the first time before the English Court of Appeal, the case of Thorogood v. Bryan, 8 C. B. 115, must be overruled." In the case of Little v. Hackett, *supra*, in the Supreme Court of the United States, Mr Justice Field, delivering the opinion, says: "The truth is, the decision in Thorogood v. Bryan rests upon indefensible ground. The identification of the passenger

with the negligent driver or the owner, without his personal co-operation or encouragement, is a gratuitious assumption. There is no such identity. The parties are not in the same position. The owner of a public conveyance is a carrier, and the driver, or the person managing it, is his servant, Neither of them is the servant of the passenger, and his asserted identity with them is contradicted by the daily experience of the world."

Quotations might be given from many cases in the different States illustrating the very firm and emphatic manner in which the doctrine of this celebrated case had been denied. The authorities in England, and the great current of authorities in this country are against it. Nor can I see why, upon any rule of public policy, a party being injured by the concurrent and contributory negligence of two persons, one of them (his common carrier) should be held and the other released from liability. As to this, I speak only for myself. In my opinion, there is no principle consonant with common sense, common honesty, or public policy, which should hold one not guilty of any negligence, either of omission or commission, for the negligence of another, imputed to him under such circumstances. Although in Carlisle v. Brisbane I may appear to have accepted that doctrine, I meant to merely state that the ground upon which this court had rested this rule was better than that taken by the English courts.

But, if this were not so, Fields was not a common carrier. Dean was riding in the wagon merely by invitation of Fields, who happened to be going in the direction of Dean's home with a load of provisions. He was carried without compensation — merely as an act of kindness on the part of Fields, who had sole control of the team and of the wagon. The case is similar in this respect to Carlisle v. Brisbane, *supra*, and to the case of Follman v. City Mankato, 29 N. W. Rep. 317. We are clearly of opinion that, if Dean himself was guilty of no negligence, the negligence of Fields cannot be imputed to him; but it is in this respect this case differs from Carlisle v. Brisbane.

THAT the offense of attempting to bribe a public officer is complete, even though in relation to a matter not within the jurisdiction of the officer, is decided by the Supreme Court of Kansas in *In re* Bozeman, 22 Pac. Rep. 628. There the question arose under the statute as to an officer of the school board. The court says:

Mr. Justice Dalrimple, speaking for the court, said in State v. Ellis, 33 N. J. Law, 102: "It is contended, in the next place, that the facts set forth in the indictment constitute no offense, inasmuch as the common council had not jurdisiction to grant the application for which the vote was sought to be bought. In my opinion it is entirely immaterial whether council had or had not jurisdiction over the subject-matter of the application. If the application was, in point of fact, made, an attempt to procure votes for it by bribery was criminal. The offense is complete when an offer of reward is made to influence the vote or action of the official. It need not be averred that the vote, if procured would have produced the desired result, nor that the official, or the body of which he was a member, had authority by law to do the thing sought to be accomplished. Suppose an application made to a justice of the peace in the court for the trial of small causes for a summons in cases of replevin, for slander, assau and battery, or trespass, wherein title to lands is involved. Over these actions a justice of the peace has no jurisdiction, and any judgment he might render therein would be *coram non judice* and void. Yet I think it can hardly be contended that a justice thus applied to may be offered, and with impunity accept, a reward to issue a summons in any case without his jurisdiction. If the common council of Jersey City had not authority to grant the application referred to, the act of the defendant in endeavoring to procure the grant asked for was only the more criminal because he sought, by the corrupt use of money, to purchase from council an easement which they had no authority to grant. He thereby endeavored to induce them to step beyond the line of their duty, and usurp authority not committed to them. The gist of the offense is said to be the tendency of the bribe to pervert justice in any of the governmental departments, executive, legislative, or judicial. 2 Bish. Crim. Law, § 86. Would it not be a plain perversion of justice to buy the votes of councilmen in favor of a surrender of the streets of the city for the purposes of a railroad, when such surrender is unauthorized by law? The rights of the citizens of the municipality thus corruptly tampered with and bargained away might be regained after a long and expensive litigation. or in some other mode; nevertheless, bribery and corruption would have done, to some extent, at least, their work, and the due course of justice have been disturbed."

A QUESTION of naturalization under the United States statute was involved in the decision of Andres v. Judge of Circuit Court, 43 N. W. Rep. 857, by the Supreme Court of Michigan. There it was held that under Rev. Stat. U. S., § 2165, relating to naturalization, which provides that an alien's declaration of intention to become a citizen may be made before the clerk of the courts therein named as well as before the court, it is not necessary that such declaration should be made in the office of the clerk. The court said:

If the declaration of intention was a proceeding on which witnesses were sworn or inquiries made, there would be, perhaps, some reason for formality. But it is a purely *ex parte* oath, which in no way dispenses with the inquiry made on final admission, and which congress has not made of any particular value. It is difficult to see for what purpose it was devised, unless possibly as a reminder that a man should not become a citizen without two year's deliberation. Even this is dispensed with in quite a number of instances; and when congress, by the act of 1824, adopted its present policy, it was evidently for the reason that the declaration was not deemed of any special importanc The final application is not required to be ma the same court, or within the same jurisdiction, where the original declaration is made; and the inquiries made at the time of his admission need not, and generally cannot, go into the *minutiæ* or circumstances of his declaration of intention, and are complete in themselves.

There is no substantial reason why a clerk must be in his office or in court for this purpose, any more than for any other ministerial act not pertaining to court business. There is no law requiring him to be in any particular place to administer affidavits. As shown in

Whallon v. Judge, 51 Mich. 503, 16 N. W. Rep. 876, the clerk's movements are not fixed within any one room or set of rooms, or any one place. By our constitution, until amended, the county clerk was clerk of both circuit and supreme courts held in his county, though not held in the same building, or in the same town. He is clerk *ex officio* of more or less other bodies, and may or must have different places of action, either of which is his official place. There is no reason why an oath may not be taken before him at any place where he happens to be, as well as before a judge, or justice, or notary, or commissioner. He is the person indicated by the law. When it dispenses with his action in open court, it dispenses with the only locality which is universally known for clerical action; and we cannot require his action under the naturalization laws to be held in any particular spot or room or building without adding to the law a qualification of our own not indicated by its language, and not required by any of its purposes. The fact that our laws give more force to these declarations than congress has done cannot have any weight in construing congressional actions. That must speak for itself, and lay down its own conditions." Morse, J., dissented from this conclusion in an opinion the reasoning of which seems to us unanswerable. He said: "On the 28th of June, 1887, Emeline Charlotte Langtry, a subject of the queen of Great Britain, made application to become a citizen of the United States, and a bound volume of declarations by aliens, in which some of the blanks had not been used, was taken from the clerk's office of the United States Circuit Court for the district of California, at San Francisco, by a deputy clerk, and carried to the private residence of Mrs. Langtry, and there her declaration was made and oath taken by the deputy clerk. This fact coming to the knowledge of Mr. Justice Field, of the Supreme Court of the United States, then holding with circuit Judge Sawyer the circuit court at San Francisco, the attention of Mr. Barne, the counsel for Mrs. Langtry, was called by Mr. Justice Field to the manner of taking of her declaration, and he was advised that the court had doubts of the legality of her declaration. Mr. Justice Field said: 'He did not think that the statutes furnished any authority for the clerk of the court to take a declaration of one to become a citizen out of his (the clerk's) office except in open court, and for that purpose to carry the records of the court to the private residence of the party. To permit the proceeding to pass without comment would be to establish a dangerous precedent, and one calculated to give rise to gross abuses. The justice observed that to be an American citizen was a great privilege; that citizenship should be regarded as a sacred trust, and that persons seeking to take upon themselves its responsibilities ought to consider it of sufficient value to attend where the records of the court are held in proper legal custody. In some States a man is allowed to vote as soon as he makes his declaration of intention to become a citizen; and if the clerk of the court, or his deputy, can go around the country taking declarations of intention and administering oaths, it is evident that dangerous consequences might follow, especially as there is no limit to the number of deputies which a clerk may appoint.' See *In re* Langtry, 31 Fed. Rep. 879, 880. * * * The record in this case also shows on the part of the relator, and is substantially admitted in the affidavits attached to the showing of the respondent, that about seven months before the general election a number of deputies were appointed by the county clerk of Ottawa county for the sole purpose of going about the county, with the necessary blanks or court records, to hunt up persons who were aliens, and to take their declarations of intention to become citizens. This was also manifestly, if the relator's showing be true, to make voters who otherwise would not have become so—men who, if left to their own motion, would never take any steps to become citizens. It is a matter of common notoriety that all over the land these men, aliens, are waited upon by partisan committees, and their naturalization fees paid out of party funds in order to make them voters. And some of these persons have so little desire of their own to become citizens that they never go any further than the declaration of their intention. The man who is worthy to become a citizen of the United States, and to share in the privileges of the government, to take part in the making of its laws, and who in good faith desires to do so, will find ways and means of his own to declare his intention, and to take all necessary steps to be clothed in time with full citizenship. It is not necessary, nor is it desirable, that about six months before election the political partisans should be scouring the county, going into every highway and alley, for aliens, who, if the expense is paid, will become voters and recruits in their party. Here lies the great incentive to fraud, and the easy opportunity for it. If the alien must himself go to the office of the clerk of the court, and pay the expenses of his own advancement to citizenship, fraud in declarations of intention to become a citizen will seldom occur; and the citizen, thus acquired, will be in the future, as in the past, a welcome and desirable addition to our voting population. If our naturalization laws had been rigidly enforced in the past, our large cities would not have been cursed, as some of them now are, with a large number of voters who openly avow that the only object they have in casting the ballot is to destroy not only our government, but all government and all law, that anarchy may reign in its stead. I do not believe in this kind of business of carrying the records and books of the courts from town to town, and from place to place, to manufacture voters, or even to accomodate an alien, who considers the privilege of American citizenship of too little value to seek it at the county seat or at the court room. And in my opinion, it is neither required by good policy nor sanctioned by the law. On the contrary, as I have shown, we have the highest judicial condemnation of it."

THE LAW IN RELATION TO COMMITMENT OF MINORS.

The law relating to the commitment of minors to various institutions, whether for care and guardianship or for purposes of restraint and reform, is entirely statutory; but the legal principles involved in the construction and application of the statutes authorizing such commitments are founded in the common-law doctrine and, in view of the decided tendency that has manifested itself of late years in American legislation to enlarge the scope of these institutions, the decisions bearing upon the subject under consideration are of interest and importance.

Commitments of minors[1] to juvenile institutions may be distinguished into three different classes—commitments as a punishment for crime, commitments where the proceeding is *quasi* criminal and commitments for care and guardianship. Statutes authorizing the commitment of juvenile offenders to houses of refuge and juvenile reformatories instead of ordinary prisons obtain in most States.[2] They must receive the same construction as other penal statutes. When the object of the restraint or imprisonment in any institution is punishment for crime, a minor cannot be proceeded against or committed without the observance of all the regular formalities of criminal procedure. The constitutional guarantees of jury trial, due process of law and the like apply with equal force in these cases as in the case of adult offenders. It was, therefore, held in Massachusetts, that a statute purporting to give inferior tribunals, not provided with a jury, power to hear and determine, in the case of juvenile offenders, accusations, the trial which must, under the provisions of the constitution of the commonwealth, be by jury is void.[3] This ruling was followed in New Hampshire, where it was held, that a statute purporting to authorize a justice of the peace to commit to an industrial school a minor upon a complaint charging a crime, with respect to which the jurisdiction of such officer only extends to requiring the accused to recognize with sureties for his appearance at court, is unconstitutional, as conflicting with a provision of the bill of rights guaranteeing a trial by jury.[4]

The proceeding in another class of cases above referred to has aptly been designated as *quasi* criminal. Statutory provisions obtain in a number of States authorizing the commitment of minors to reformatory institutions upon application and complaint of parents or guardians, made before some inferior magistrate, alleging that the minor is incorrigible and beyond domestic control. Legislation of this kind is not unconstitutional. The object of the detention in these cases is not punishment, but reform and moral training, and proceedings under statutes authorizing such commitments have been held to be valid upon the ground that the *parens patriæ*, or sovereign right to care for the education of its members belongs of strict right to the State, under whose sanction the custody or charge of the minor is thus transferred from the guardian who declares his inability to fulfill the purposes of guardianship.[5] But, when guardians or parents voluntarily come forward and make application to have children whose care devolves upon them virtually placed within prison walls for alleged incorrigibility, great care should be exercised to ascertain whether circumstances really warrant such a course. It is no light matter to compel a boy or girl to spend his childhood days as a prisoner, and there should be clear proof of the necessity of such course before the application is granted. Proceedings of this character are not infrequently instituted by parents or guardians who are anxious to "put away" a child from sinister motives, and such abuses of legal process should be jealously guarded against by the officials vested with the committing power in these cases. The powers of commitment in such cases are strictly construed, and every statutory requirement must be fulfilled; the rights of the infant whose condition is at stake must be duly guarded.[6]

The last class of cases above referred to in which minors may be committed to juvenile institutions is the most important and interesting. It includes all those cases in which the State intervenes in its capacity as *parens patriæ* and, through its officers, assumes the

[1] The word "minor" bears the same meaning as infant. Bouvier's Law Dict. and Anderson's Law Dict., title "Minor." It is used interchangeably with the latter expression in American statutes. The full age of legal capacity in males, as well as females, at common law is twenty-one years; and although, in the case of female infants, an enlarged capacity to act at eighteen years in certain matters is conferred by statute in some States, they are not, upon such account, considered as being of full age before twenty-one. Waring v. Waring, 2 Bland Ch. R. 673; Greenwood v. Greenwood, 28 Md. 369. The matter of fixing the period of minority is, however, within legislative control. Bennet v. Bennet, 13 N. J. Eq. 114. In Nebraska, for instance, it is provided by statute that minority in the case of females ends at eighteen years. Parker v. Shaw, 21 Neb. 680.

[2] Juvenile offenders against Federal laws may likewise be sentenced to houses of refuge or juvenile reformatories, instead of ordinary prisons. U. S. Rev. Stat. §§ 5548-5550.

[3] Com. v. Horregan, 121 Mass. 450.

[4] State v. Ray, 63 N. H. 406.

[5] *Ex parte* Crouse, 4 Whart. 9; Roth v. House of Refuge, 31 Md. 329; Com. v. McKeagy, 1 Ashm. 248.

[6] Com. v. McKeagy, *supra*.

care and education of children who are either without a guardian or place of abode, commonly designated as vagrant and destitute minors, or who are neglected, ill-treated or not properly cared for by their guardian, natural or appointed. Intervention, or interference, by process of law in matters affecting the care and guardianship of minors is carried to an extent in the United States beyond anything that is known under legal systems elsewhere, and it is, therefore, interesting and instructive to inquire into the precise grounds upon which such action rests and the direction and extent it may properly assume. The fundamental doctrine upon which governmental intervention in all such cases is based is, that, the moment a child is born, he owes allegiance to the government of the country of its birth and is entitled to the protection of that government, for his person as well as his property. In order to discharge this duty of protection goverment, by way of safeguard and for the benefit of the infant places him under guardianship; but it is only that there may be best secured to him the assistance and protection of law, and that he may acquire that education which will enable him afterwards to discharge the duty which he owes as well to his country as to himself that he is thus placed by law under guardianship.[7] The authority of all guardians is derived from the State, some being expressly appointed when the occasion for them arises or is expected to arise, while, in other cases, the guardian is appointed, as it were, by a general rule of law, or, as it is said, by the course of the law the wardship is cast upon him.[8] The nature of the office of guardian is that of a trust, delegated by the State, which can neither be claimed as a matter of right,[9] alienated by contract or agreement,[10] nor relinquished at the mere will of the guardian.[11] The execution of this trust is, at all times superintended by the State. The most ancient and, in some respects, plenary method by which this sovereign guardianship of the State is exerted is through the courts of chancery. The jurisdiction in such cases is ample, effectual and far reaching.[12] By the very fact of the institution of a proceeding affecting the person or property of an infant the court acquires jurisdiction and the infant becomes a ward of court,[13] and no act can be done affecting the person, property or State of such infant, unless under the express or implied direction of the court itself.[14] The jurisdiction extends over all classes of guardians.[15] The intervention is not necessarily based upon actual misconduct of the guardian, but may

[7] 2 Kent's Com. 263-5; *In re* Moore, 11 Ir. C. L. (N. S.) 1, 14; *In re* Connor, 16 *Ib.* 112, 124; Mercein v. People, 25 Wend. 64, 103; *Ex parte* Crouse, 4 Whart. 9: The Etna, 1 Ware, 462; Striplin v. Ware, 36 Ala. 87; Albert v. Perry, 14 N. J. Eq. 540; *In re* Lewis, 88 N. C. 31.

[8] Com. Dig., Guardian, D.

[9] Wellesley v. Wellesley, 2 Bligh (N. S.), 124; *In re* Lewis, 88 N. C. 31; Shine v. Brown, 20 Ga. 375; Prime v. Foote, 63 N. H. 52; Bennet v. Bennet, 13 N. J. Eq. 114.

[10] Bedell v. Constable, Vaugh. 177; Zillareal v. Mellish, 2 Swanst. 533; Westmeath's Case, Jac. 251, n.; St. John v. St. John, 11 Ves. 526, 531; *In re* Moore, 11 Ir. C. L. (N. S.) 1, 33-38, 45; Hope v. Hope, 26 L. J. Ch. 417, 424; Van Sittart v. Van Sittart, 27 *Ib.* 290; Walrond v. Walrond, 28 *Ib.* 97, 101; Andrews v. Salt, L. R. 8 Ch. 622; Torrington v. Norwich, 21 Conn. 543; Johnson v. Terry, 34 *Ib.* 259; State v. Baldwin, 5 N. J. Eq. 454; Albert v. Perry, 14 *Ib.* 540; Byrne v. Love, 14 Tex. 81; Cook v. Bybee, 24 *Ib.* 278; *In re* Lewis, 88 N. C. 31; State v. Reuff, 29 W. Va. 731; Washaw v. Gamble, 50 Ark. 351; Sturtevant v. State, 15 Neb. 259; Cunningham v. Cunningham, 18 B. Mon. 19, 24; People v. Porter, 23 Ill. App. 198; Brooks v. Logan, 112 Ind. 183.

[11] Spencer v. Earl of Chesterfield, Ambler, 146; *Ex parte Crumb*, 2 Johns. Ch. R. 439; Young v. Lorain, 11 Ill. 624; Balch v. Smith, 12 N. H. 437.

[12] 2 Story Eq. Jur. §§ 1328-1334; 3 Pomeroy Eq. Jur. § 1304; Co. Litt. 87*a*, Harg. n. (70), § 16; 2 Fonb. Eq. Pt. 2, ch. 2, § 1, n. (a); DeManneville v. DeManneville, 10 Ves. 63, 64; Morgan v. Dillon, 9 Mod. 139, 140; Eyre v. Countess of Shaftsbury, 2 P. Wm. 118, 123; Butler v. Freeman, Ambler, 202; Wellesley v. Duke of Beaufort, 2 Russ. 1; S. C., *nom.* Wellesley v. Wellesley, 2 Bligh (N. S.), 124; Striplin v. Ware, 36 Ala. 87; Bryan v. Bryan, 34 Ala. 516; Woodruff v. Conley, 50 Ala. 304; Anonymous, 55 Ala. 428; Jones v. Stockett, 2 Bland Ch. R. 409, 430; Corrie's Case, *Ib.* 488, 492.

[13] Eyre v. Countess of Shaftsbury, 2 P. Wms. 112; Butler v. Freeman, Ambler, 302; Johnstone v. Beattie, 10 Clark & Fin. 42, 84; Rivers v. Durr, 46 Ala. 418; Lee v. Lee, 55 Ala. 590; Helms v. Franciscus, 2 Bland, 545, 578; Jenkins v. Whyte, 62 Md. 427, 432; *In re* Van Houten, 3 N. J. Eq. 220; Cowls v. Cowls, 8 Ill. 435; Miner v. Miner, 11 Ill. 43; Lloyd v. Kirkwood, 112 Ill. 329.

[14] 2 Story Eq. Jur. § 1353; Butler v. Freeman, *supra;* Johnstone v. Beattie, *supra;* Stuart v. Marquis of Bute, 9 H. L. Cas. 440; Hutson v. Townsend, 6 Rich. Eq. 249; Joab v. Sheets, 99 Ind. 328.

[15] Duke of Beaufort v. Berty, 1 P. Wms. 702; Eyre v. Countess of Shaftsbury, 2 *Ib.* 102, 107; Roach v. Garvan, 1 Ves. Sr. 157; *In re* McCullochs, 1 Dru. 276; People v. Erbert, 17 Abb. Pr. 395, 400; Wilcox v. Wilcox, 14 N. Y. 575; Corrie's Case, 2 Bland Ch. R. 488, 501; Hill v. Hill, 49 Md. 450; Westbrook v. Comstock, Walker's Ch. R. 314; Cowls v. Cowls, 8 Ill. 435, 441; Copp v. Copp, 20 N. H. 284; Prime v. Foote, 63 N. H. 52; *In re* Van Houten, 3 N. J. Eq. 220; Lee v. Lee, 55 Ala. 590.

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be by way of preventive justice,[16] and may assume the form of specific directions to the guardian in regard to the child's care and education,[17] or of a restraining order prohibiting the removal of the infant out of the jurisdiction.[18] In cases of grave misconduct or unfitness chancery courts entirely remove or supersede the guardian, natural or appointed.[19]

The State intervenes in other respects to control, regulate or otherwise interfere with the domestic relation. Thus, when the necessities of government require it, a minor may be allowed to contract an engagement independently of his parent or appointed guardian to serve as a soldier, and the guardianship authority is then suspended, though not destroyed.[20] So, likewise, by direct legislative action, the matter of the education and physical and moral welfare of minors may be regulated, these things being recognized as within govermental control.[21]

After the foregoing exposition there will be no difficulty in understanding the position assumed by our American courts in relation to the power of legislatures to provide for the commitment of minors comprehended within the third class of cases to juvenile institutions. The uniform doctrine of our courts is, that whenever such a course is rendered necessary or requisite to their moral and future welfare, the commitment of minors to houses of refuge and other juvenile asylums or institutions may be authorized by summary proceeding; that, upon the same principle which recognizes the right of the courts of a State, by virtue of their general powers, to interfere for the protection and care of children, the legislature may prescribe the cases in which children shall be rescued from improper surroundings and a mode provided for their summary disposition. This is now the established law in Pennsylvania,[22] Maryland,[23] Wisconsin,[24] Ohio,[25] Massachusetts,[26] New York[27], Indiana[27a] and Illinois.[28] Legislatures not only have the power to make such provisions, but the duty of a State, in its character of *parens patriæ*, to protect and provide for the comfort and well-being of such of its citizens as, by reason of infancy, defective understanding or other misfortune or infirmity, are unable to take care of themselves, is regarded as a high and imperative one; the performance of this duty is justly regarded as one of the most important governmental functions, and all constitutional limitations must be so understood and construed as not to interfere with its proper and legitimate exercise.[29]

The tendency of the courts, in construing the powers of committing magistrates and other officials empowered by statutes to place minors in juvenile institutions for care

[16] Duke of Beaufort v. Berty, 1 P. Wms. 702, 705; DeManneville v. DeManneville, 10 Ves. 52; *In re* Van Houten, 3 N. J. Eq. 220; Lee v. Lee, 55 Ala. 590.

[17] Creuze v. Hunter, 2 Cox Ch. Cas. 242; Roach v. Garvan, 1 Ves. Sr. 158; Ld. Shipbrook v. Ld. Hinchinbrook, 2 Dick. 547; Eyre v. Countess of Shaftsbury, 1 P. Wms. 105, 119; *In re* Van Houten, 3 N. J. Eq. 220.

[18] Crenze v. Hunter, *supra;* DeManneville v. DeManneville, 10 Ves. 52; *In re* Plomley, 47 L. T. 283; *In re* Stewart, Wall. Lyne, 115; *In re* Van Houten, *supra;* State v. King, 1 Geo. Dec. 93.

[19] Foster v. Denny, 2 Ch. Cas. 237; Ingham v. Bickerdike, 6 Madd. 275; *Ex parte* Mountfort, 15 Ves. 445; Smith v. Bate, 2 Dick. 631; *In re* McCullochs, 1 Dru. 276; Anonymous, 2 Sim. (N. S.) 54; Shelley v. Westbrooke, Jac. 266; Thomas v. Roberts, 3 DeG. & Sm. 758; *In re* Besant, 11 Ch. D. 508; Wilcox v. Drake, 2 Dick. 631; *Ex parte* Warner, 4 Bro. C. C. 101; Whitfield v. Hales, 12 Ves. 492; *In re* Goldsworthy, 2 Q. B. Div. 75, 84; Cowls v. Cowls, 8 Ill. 435; State v. Grigsby, 38 Ark. 406.

[20] R. v. Rotherfield Grays, 1 B. & C. 345; U. S. v. Bainbridge, 1 Mason, 71; Com. v. Gamble, 11 S. & R. 93; Com. v. Morris, 1 Phila. 381; *In re* Disinger, 12 Ohio St. 256; Kelly v. Sprout, 97 Mass. 169; Johnson v. Dodd, 56 N. Y. 76; Halliday v. Miller, 29 W. Va. 424.

[21] State v. Clottu, 33 Ind. 409; State v. Lawrence, 97 N. C. 492.

[22] *Ex parte* Crouse, 4 Whart. 9.

[23] Roth v. House of Refuge, 31 Md. 329.

[24] Milwaukee Ind. School v. Supervisors, 40 Wis. 328.

[25] Prescott v. State, 19 Ohio St. 184; House of Refuge v. Ryan, 37 *Ib.* 197; *In re* Kruse, 2 Cinn. Sup. Ct. R. 71.

[26] Farnham v. Pierce, 141 Mass. 203.

[27] *In re* Donohue, 1 Abb. New Cas. 1, 52 How. Pr. 251.

[27a] Jarrard v. State, 116 Ind. 98.

[28] In this State, a statute authorizing the commitment of destitute minors to reformatories was declared unconstitutional upon the ground that, under its terms, the children so committed were virtually treated like offenders. People v. Turner, 55 Ill. 280, 10 Am. L. Reg. 336. In a later case it was held that a different statute, by which greater restrictions were thrown around the procedure of commitment as well as the conduct of the institution than by the former statute, was constitutional. *In re* Ferrier, 103 Ill. 367. In a still later case it was held that the claim that a statute of this description is not as well guarded, in some respects, as it might be, with a view of preventing abuses, is a matter that addresses itself to the legislative, rather than the judicial department of government, and would be no ground for declaring the act unconstitutional. McLean v. Humphreys, 104 Ill. 378.

[29] McLean v. Humphreys, 104 Ill. 378, 383.

and guardianship and in passing upon their proceedings, is to disregard mere technicalities and to give such interpretation to the statutes as to carry out their benevolent design and sustain the proceeding in pursuance thereof, when such course is evidently to the advantage of the minor.[30] Yet proceedings under such statutes must show that due regard was had to the rights of the minor, and, if any serious departure from the statutory requisites be shown, the commitment will not be upheld.[31] The principle underlying this doctrine makes it analogous to the rule obtaining in relation to indentures of apprenticeship, that the statutory authority must be strictly pursued so far as the interests of the minor are concerned.[32] Notwithstanding the fact that a commitment is regular in form, the courts may, in a *habeas corpus* proceeding, inquire into the existence of a sufficient cause for detention,[33] even though a statute should expressly prohibit such inquiry.[34] The parents or guardians need not necessarily be made parties to the proceeding of commitment; they are not concluded by it, as they may afterwards be heard in a *habeas corpus* proceeding.[35] In New York the doctrine prevails that a commitment of a minor to a juvenile institution is to be regarded as a final judgment and cannot be impeached or questioned collaterally, so that the existence of sufficient cause therefor may not be inquired into upon *habeas corpus*.[36] In Maryland the procedure of commitment to juvenile institutions is quite informal and summary; but, it is expressly provided by statute, that, in a *habeas corpus* proceeding, the courts may hear facts and adjudicate the entire matter *de novo*.[37]

Another method by which juvenile institutions acquire the care and charge of minors is through the surrender of them by parents or guardians. The transfer of the charge of care and education in cases of this kind does not derive its validity and efficacy from the mere act of the parent or guardian, because, as already stated, guardianship can neither be alienated by contract or agreement, nor voluntarily relinquished. Such transfers derive their authority either from the sanction of express statutory provisions, or from the operation of a well-established principle now to be stated. This principle is, that, although guardianship cannot be assigned or transferred, and agreements to this effect are against public policy and will not be enforced by the courts, yet when an agreement of this kind has been entered into, accompanied by a surrender of the actual custody, whether to an institution or an individual, the party who has thus surrendered a child of whom he is the legal guardian may, upon equitable grounds connected with the welfare of the

[30] *In re* Barre, 14 Abb. Pr. (N. S.) 426.

[31] People v. Catholic Protectory, 38 Hun, 127, 44 Hun, 256, 106 N. Y. 104; People v. House of Good Shepherd, 44 Hun, 562; *In re* Heery, 51 Hun, 372; Hibbard v. Bridges, 76 Me. 324; Goodchild v. Foster, 51 Mich. 599. *Cf.* Copeland v. State, 60 Ind. 394.

[32] People v. Gates, 43 N. Y. 40, 39 How. Pr. 74; Ballenger v. McLain, 54 Ga. 159; Burnham v. Chapman, 17 Me. 385; Doane v. Covel, 56 Me. 527; Brown v. Whittemore, 44 N. H. 369; *In re* Goodenough, 19 Wis. 274; Cannon v. Stuart, 3 Houst. (Del.) 223; Graham v. Kinder, 11 B. Mon. 60; Harper v. Gilbert, 5 Cush. 417; Himes v. Howes, 13 Metc. 80; Reidell v. Congdon, 16 Pick. 44; Bardwell v. Purrington, 107 Mass. 419.

[33] Prescott v. State, 19 Ohio St. 184; House of Refuge v. Ryan, 39 Ohio St. 197; *In re* Kruse, 2 Cinn. Sup. Ct. R. 71.

[34] Prescott v. State, *supra*.

[35] Prescott v. State, *supra*; Ryan v. State, *supra*; Milwaukee Ind. School v. Supervisors, 40 Wis. 328. In the last case the doctrine is held that, although the parents or guardians are not bound by the proceeding of commitment, yet the child whose condition and welfare is at stake is concluded by the commitment; but the soundness of this view may well be questioned.

[36] People v. Cath. Protectory, 38 Hun, 127, 44 Hun, 56, 106 N. Y. 104; *In re* Donohue, 1 Abb. N. Cas. 1, 52 How. Pr 251; People v. Sisters of St. Dominick, 1 How. Pr. (N. S) 132; *In re* Moses, 13 Abb. N. Cas. 89, 66 How. Pr. 296. In this connection it should be remembered, however, that, according to the doctrine prevailing in New York, as well as elsewhere, any commitment, at least of an inferior magistrate, may be impeached for want of jurisdiction in the committing officer, even though regular upon its face. Divine's Case, 11 Abb. Pr. 90; People v. Warden, 100 N. Y. 20; Sennott's Case, 146 Mass. 488; State v. Glenn, 54 Md. 572, 609; *In re* Golding, 57 N. H. 146; *In re* Wooldridge, 30 Mo. App. 612; Turnay v. Barr, 75 Iowa, 758; *In re* Davis, 38 Kan. 408; *In re* Authers, 16 Cox C. C. 588. A somewhat analogous principle is that which has been applied to indentures of apprenticeship, it being held that, although they may be executed in due form and not subject to impeachment in a collateral way, yet if the minor's age is wrongly stated he is not bound by such statement, but may prove that he is beyond the age given in the indentures and claim his discharge upon *habeas corpus*. Banks v. Metcalfe, 1 Wheeler Cr. Cas. 381. Some cases go to the further extent of holding that, where a statute confers power upon certain tribunals to apprentice minors falling within specified descriptions, the validity of their action may be collaterally inquired into upon *habeas corpus*. Hatcher v. Cutts, 32 Ga. 616; Comas v. Reddish, 35 Ga. 236; Adams v. Adams, 36 Ga. 236; Alfred v. McKay, 36 Ga. 440. *Contra*: Brinster v. Compton, 68 Ala. 299.

[37] Code, art. 42, §§ 18-20.

child, be prevented from revoking his consent to the transfer and reclaiming the child. Strictly speaking, the guardianship in such cases is not changed and there is no transfer of any right. The principle under consideration finds its most extensive application in the doctrine, that, where a parent or guardian has relinquished the charge and care of a child for such a length of time that the child has found in the home and among the people to whom he has surrendered it new ties and associations which cannot be severed without risking the interest and happiness of the child, he will not be permitted to reclaim it.[38]

Statutes authorizing the surrender by parents and others incapable of caring for them of children to juvenile institutions have been enacted in a number of States. They should receive a fair and liberal construction, so as to carry out effectually their humane and charitable provisions;[39] but sight must not be lost of the distinction between an entire surrender of the child's charge and a mere temporary relinquishment.[40]

A system prevails in a number of States of binding or placing out in families children whose care has been committed to juvenile institutions. In such event there is generally a written stipulation that the institution retains control and supervision of the child and that its managers may retake the child, if they deem desirable. Such stipulations will be enforced by the courts in a *habeas corpus* proceeding.[41] Reasonable regulations may be made by the managers of such institutions to enable them to carry out their work efficiently. Thus, in some institutions it is a rule that the whereabouts of children for whom homes have been found shall not be disclosed to their relatives, and it has been held that the writ of *habeas corpus* cannot be used as a means to compel the officers of the institution to disclose where they have placed children.[42] LEWIS HOCHHEIMER.

[38] The rule in such cases, in its broadest terms, may be thus stated: Wherever, through the act or omission of the legal custodian, the charge and custody of a child has come to be in a third party, the courts will not, at the instance of the legal guardian, interpose to restore the child to him, thus breaking up the new ties that the child has been allowed to form, if a change of custody would be disadvantageous to the child; and it matters not whether it is through the fault or mere misfortune of the legal guardian that such state of affairs has arisen. Com. v. St. John's Orphan Asylum, 9 Phila. 571; Com. v. Adams, 16 Phila. 516; Com. v. Gilkeson, 1 Penna. L. J. 505, 1 Phila. 194; *Ex parte* O'Neal, 3 Am. Law Rev. 578; Dumain v. Gwynne, 10 Allen, 270; Pool v. Gott, 14 L. R. 269; Chapsky v. Wood, 26 Kan. 650; Zenser v. Ford, 37 Ark. 27; Washaw v. Gamble, 50 Ark. 351; *In re* Waldron, 13 Johns. 418; *In re* Lawson, 31 Hun, 539; People v. Brown, 35 Hun, 324; State v. Bratton, 15 Am. L. Reg. (N. S.) 359; Drumb v. Keen, 47 Iowa, 435; Bonnett v. Bonnett, 61 Iowa, 199; Jones v. Cleghorn, 54 Ga. 9; Bently v. Terry, 59 Ga. 555; Miller v. Wallace, 76 Ga. 479; Brinster v. Compton, 68 Ala. 299; McShan v. McShan, 56 Miss. 413; Fullilove v. Banks, 62 Miss. 11; Ellis v. Jessup, 11 Bush, 403; *In re* Scarrett, 76 Mo. 565; *In re* Doyle, 16 Mo. App. 159; Bryan v. Lyon, 104 Ind. 227; People v. Porter, 23 Ill. App. 198; Merritt v. Swimley, 82 Va. 433; Coffee v. Black, *Ib.* 567. In a recent New Brunswick case, *In re* Coram, 25 N. B. 504, the doctrine here stated was disregarded by a majority of the court, but two of the judges, in an able dissenting opinion, took grounds similar to those taken in the American cases.

[39] People v. Kearney, 31 Barb. 430; Dumain v. Gwynne, 10 Allen, 270; Com. v. St. John's Orphan Asylum, 9 Phila. 571; Curtis v. Curtis, 5 Gray, 535.

[40] Wishard v. Medaris, 34 Ind. 168; Miller v. Wallace, 76 Ga. 479.

[41] Milligan v. State, 97 Ind. 355.

[42] Dumain v. Gwynne, 10 Allen, 270; *In re* Larson, 31 Hun, 539.

CRIMINAL LAW—ASSAULT WITH INTENT TO KILL—DEADLY WEAPON.

STATE V. HERTZOG.

Supreme Court of Louisiana, October Term. 1889.

1. Section 794, Rev. St., defines two distinct offenses, viz: (1) Inflicting a wound less than mayhem with a dangerous weapon; (2) inflicting a like wound with intent to kill,—and, under a count charging the first offense, proof of intent to kill is not essential.

2. Under the first clause of the statute, it is not essential that the instrument used should be a technically dangerous weapon, fashioned and used for purposes of offense. It was long since held that an ordinary pocket-knife, when so employed, was a dangerous weapon within the meaning of the statute; and so, by parity of reasoning, would be an axe as used in the present case.

FENNER, J.: The prisoner was indicted under 794, Rev. St., as amended in 1888, and which reads as follows: "Whoever shall willfully and maliciously, with a dangerous weapon, or with intent to kill, inflict a wound less than mayhem upon another person, shall, on conviction, be imprisoned not exceeding two years, with or without hard labor, and fined not exceeding one thousand dollars." It is now perfectly settled that this statute defines two distinct offenses, viz.: (1) Inflicting a wound less than mayhem with a dangerous weapon; (2) inflicting a like wound with intent to kill. State v. Mix, 8 Rob. (La.) 549; State v. Lovenstein, 9 La. Ann. 313; State v. Simien, 36 La. Ann. 923. The first-mentioned is

sufficiently charged without any allegation of an intent to kill. Accordingly, this indictment charges each of the above offenses in separate counts, and the defendant was found guilty under the second count, which charged the offense of inflicting the wound with a certain dangerous weapon called an "axe." * * *

The defendant asked the judge to charge the jury, in substance, that inasmuch as the wound was inflicted with an axe, which is not *per se* a dangerous weapon within the meaning of the statute, defendant could not be convicted without allegation and proof that the wound was inflicted "with intent to kill." Exception was taken to the refusal of the judge so to charge. The contention of defendant is that the first clause of the statute applies to weapons technically dangerous, constructed and employed for use as weapons; and that where the offense is committed with instruments intended and employed for innocent and useful purposes, and only becoming dangerous weapons when diverted from their proper use and purpose, the case falls within the second clause, and requires allegation and proof of the intent to kill; and that, otherwise, such intent would be in no case essential, and that clause of the statute would be inoperative. We were much impressed with the force of this argument, though its strength was weakened by a consideration of the difficulty of holding that a wound inflicted with so deadly an instrument as an axe, used as a weapon, is not inflicted with a dangerous weapon under the terms of the statute. The question, however, is not *res nova*, and our doubts are resolved by the clear authority of the case of State v. Jacob, 10 La. Ann. 141, in which the indictment was under the same statute, and the instrument used was a pocket-knife. The lower judge had been asked to charge that "if the knife used by the defendant was shown by the evidence to be an ordinary pocket-knife, such as is commonly used by planters for proper purposes, and was not by accused specially provided for this occasion, then it was not a dangerous weapon within the meaning of the law;" and this court said: "We are of opinion the judge did not err in refusing to give such instructions." The case is directly in point, rendered over 30 years ago, and has never been overruled. We feel bound to follow it. Judgment affirmed.

NOTE. — *Dangerous and Deadly Weapons.*— The words "dangerous" and "deadly" are practically synonymous when used in this connection, and what is a dangerous or deadly weapon is generally a question of fact, and not of law, and is for the jury.[1] A dangerous weapon is one which is likely to produce death or great bodily injury.[2] In many cases the court may declare that a particular weapon was, or was not, a dangerous weapon; and, when practicable, it is the court's duty to do so. But where the weapon might be dangerous or not, according to the manner in which it was used or the part of the body struck the question must be left to the jury.[3] Courts judicially know some weapons to be deadly without any distinct averment in the indictment to that effect.[4] That a loaded pistol is both a dangerous and deadly weapon, the courts will notice without proof.[5]

In United States v. Small,[6] the court said: "In many cases it is practicable for the court to declare that a particular weapon was or was not, a dangerous weapon, within the meaning of the law, and when it is practicable it is a matter of law and the court must take the responsibility of so declaring. But when the question is whether an assault with a dangerous weapon has been proved, and the weapon might be dangerous to life or not, according to the manner in which it was used, or according to that part of the body attempted to be struck, I think a more general direction must be given to the jury; and it must be left for them to decide whether the assault, if committed, was with a dangerous weapon.[7] A deadly weapon is one likely to produce death or great bodily harm.[8] In State v. Huntley,[9] the court said, "Then what is a deadly weapon." It must be an instrument used, or that may be used, for the purpose of defense or offense, capable of procuring death. Some weapons are *per se* deadly; others, owing to the manner in which they are used, become deadly. A gun, a pistol, or a dirk-knife, is of itself deadly; a small pocket-knife, a walking cane, a switch of the size of a woman's finger, if strong and tough, may be made a deadly weapon if the aggressor shall use such instrument with great force and furious violence, and especially, if the party assailed should have comparatively less power than the assailant, or be helpless or feeble." In State v. Napper,[10] the indictment was for an assault with a deadly weapon, with intent to commit murder, the court said: "To constitute, then, the crime of which defendant was convicted he must have made an unlawful attempt with a deadly weapon, either in its nature, or capable of being used in a deadly manner, intending to inflict a bodily injury and with the present ability so to do."

An indictment for an assault with intent to commit murder, charged that the defendants assaulted the prosecutor with a loaded pistol and a hoe, without alleging the hoe and pistol were deadly weapons. Held that the indictment was sufficient, and that if it was necessary to show the weapons used were deadly ones, that was shown by proof of an assault with the pistol and hoe, that a hoe, in legal signification, is a deadly weapon, as much so as a loaded pistol or an axe, and that proof of their deadly character was not necessary.[11] In Kruger v. State,[12] the court said: "The indictment fails to charge that the weapons with which the defendants made the assault were deadly weapons, or that the names given to them import that they were such. They were being described as being weapons to-wit, wooden clubs. They say that to warrant a conviction under the section of the criminal code of that State under which the indictment was found, it is necessary that the assault be made with a deadly weapon, or with some other instrument or

1 Doering v. State, 49 Ind. 60, 19 Am. Rep. 669; Peope v. Rodrigo (Cal.), 11 Pac. Rep. 481.
2 United States v. Williams, 2 Fed. Rep. 64.
3 United States v. Small, 2 Curtis C. C. 243; State v. Dineen, 10 Minn. 411.
Dollarhide v. U. S., 1 Morris (Iowa), 233, 39 Am. Dec. 460.
5 U. S. v. Williams, 2 Fed. Rep, 64.
6 2 Curt. C. C. 241.
7 See State v. Rigg, 10 Nev. 284.
8 Kouns v. State, 3 Tex. App. 15.
9 91 N. C. 617.
10 6 Nev. 113.
11 Hamilton v. People, 113 Ill. 34.
12 Neb. 365.

thing fitted to occasion death, or the use to which it is put." If it be a weapon, the ordinary name of which *ex vi termini*, imports its deadly character, *e. g.* a sword, a gun, or pistol, it would be sufficient to describe it by such a name; but in other cases the instrument or thing used should be described and charged in the indictment. When a gun or pistol is used simply as an instrument to strike with, it is not necessarily a deadly weapon, but would be such or not, according to its size and manner of using it; and these facts should be determined by a jury.[13] Whether a pistol is a deadly weapon, when used to strike with as a club or stick, must depend upon its size or weight in connection with the manner of its use and the part of the person that is stricken with it. A pistol used to strike with is nothing more than a piece of iron of the same size, weight, and shape. There may be five or six shooting pistols so small that they would not, when so used, be likely to produce death or serious bodily injury.[14] In State v. Erwin,[15] under a statute making it indictable for one to carry concealed about his person any "pistol, bowie-knife, razor, or other deadly weapon of like kind," it was held that a butcher's knife was included. The words "other deadly weapons of like kind" implying similarity in the deadly character of weapons, such as can be conveniently concealed about one's person to be used as a weapon of offense or defense. A weapon may be a deadly weapon although not especially designated for offensive or defensive purposes, or for the destruction of life or the infliction of injury.[16] A chair is not necessarily a deadly weapon; whether it is such must depend upon its size and weight in connection with the manner of its use and the part of the person stricken with it.[17] A stone may or may not be a dangerous weapon, depending upon its size and other circumstances. A large heavy stone in the hands of a man intending to do great bodily harm is likely to produce that result.[18]

If a deadly weapon be used in the case of homicide in the manner in which it would be likely to produce death, the presumption of an intention to kill arises, otherwise, if used so as not naturally to produce death.[19] The following are instances where it has been held that the instruments used were deadly weapons. An axe,[20] a bottle,[21] brass-knuckles,[22] a bowie-knife,[23] a chisel,[24] a gun or pistol,[25] if it is loaded, a gun or pistol may be used as a bludgeon,[26] and it may be a deadly weapon according to its size and manner of using it,[27] a handspike,[28] an iron bolt, rod, or pin used by thrusting, whether the point be sharp or not, under a statute, making it an offense to "shoot, stab, or thrust any person with a dangerous weapon,[29] a knife,[30] but it must be shown that it was used as a deadly weapon,[31] a knife with a blade three inches long,[32] a pocket-knife,[33] a hatchet,[34] a pick-handle,[35] a pitchfork,[36] a stone or iron weight,[37] a shoxel,[38]

The following are instances in which the instruments used were not considered "deadly weapons." A horse shoe,[39] a shovel-handle when but one blow was struck,[40] a fence-pole,[41] a pitchfork handle under a statute which required the weapon to be sharp as well as dangerous.[42]

WM. M. ROCKEL.

13 Shadle v. State, 34 Tex. 572.

14 Skidman v. State, 43 Tex. 93; Chambers v. State, 42 Tex. 254.

15 91 N. C. 545.

16 Bilge v. State, 20 Fla. 742, 51 Am. Rep. 628. See Hamilton v. People, 113 Ill. 34, where a hoe was held to be such, and Wilson v. State, 33 Ga. 217, where a bottle was held to be a deadly weapon; also State v. Dineen, 10 Minn. 407, where a stone was so considered.

17 Kouns v. State, 3 Tex. App. 13.

18 State v. Dineen, 10 Minn. 407.

19 Harvey v. State, 68 Ga. 615; Moon v. State, 68 Ga. 698.

20 Dollarhide v. U. S., 1 Morris (Iowa), 233; State v. Ostrander, 18 Iowa, 435.

21 Wilson v. State, 33 Ga. 217.

22 Wilks v. State, 3 Tex. App. 34.

23 Buchanan v. State, 24 Ga. 286.

24 Com. v. Branham, 8 Bush (Ky.), 387.

25 Com. v. White, 110 Mass. 407; Com. v. Fenno, 125 Mass. 387; State v. Painter, 67 Mo, 84; Agee v. State, 64 Ind, 340; Prior v. State, 41 Ga. 155; State v. Swann, 65 N. C. 330.

26 State v. Franklin, 36 Tex. 135; Allen v. People, 82 Ill. 610.

27 Shadle v. State, 34 Tex. 572.

28 R. v. Shea, 3 Allen (New Brunswick), 129.

29 State v. Lowry, 33 La. Ann. 1224.

30 Furgeson v. State, 6 Tex. App. 504.

31 Hilliard v. State, 17 Tex. App. 210.

32 Buggs v. State, 6 Tex. App. 144.

33 Silvester v. State, 71 Ala, 17.

34 State v. Sebastian, 81 Mo. 514.

35 Smith v. State, 73 Ga. 31.

36 McReynolds v. State, 4 Tex. App. 327; State v. Beverlin, 30 Kan. 611.

37 Brown v. State, 58 Ga. 212; Milner v. State, 30 Ga. 138; State v. Dineen, 10 Minn. 407; Regan v. State, 46 Wis. 256; Coleman v. State, 28 Ga. 79; Bilge v. State, 20 Fla. 742, 51 Am. Rep. 628.

38 State v. Beadon, 17 S. C. 55.

39 People v. Cavanaugh, 61 How. Pr. 187.

40 People v. Comstock, 49 Mich. 330. See Smith v. State, 73 Ga. 31.

41 Wilson v. State, 15 Tex. App. 150.

42 Filkins v. People, 69 N. Y. 101; People v. Hickey, 11 Hun (N. Y.), 631. See People v. Carey, 72 N. Y. 393. See also, included in statute, State v. Wilforth, 74 Mo. 528, Offensive weapon: See Rex v. Johnson, 1 Russ. & Ry. 493. Other cases not hereinbefore cited, Com. v. O'Brien, 119 Mass. 342; Pinson v. State, 23 Tex. 579; U. S. v. Wilson, Bald. (U. S.) 78; U. S. v. Wood, 3 Wash. (U. S. C. C. 440; Flourney v. State, 16 Tex. 31; State v. Jarrott, 1 Ired. 76; State v. Harper, 69 Mo. 425; Briggs v. State, 6 Tex. App. 144.

JETSAM AND FLOTSAM.

WHAT IS UNMAILABLE MATTER.—In United States v. Harman, 38 Fed. Rep. 828, Foster, J., says: "Counsel for defendant, in support of the demurrer, have made an ingenious argument, and one showing much research in the field of general literature. They insist that if an article in a paper or other publication comes within the meaning of the law, then by the same reasoning a chapter or sentence of a book which is obscene would bring under the ban of the law the whole book, and would exclude it from the mails. As a result, not only medical works, but the writings of such authors as Swift, Pope, Fielding, Shakespeare, and many others, and even the Bible itself, would be denied the privileges of the Uniten States mails. Undoubtedly there are parts of the writings of said authors, and many others equally noted, which are open to the charge of obscenity and lewdness, but any one objecting to such works being carried through the mails would be laughed at for his prudery. I have but little patience with those self-constituted guardians and censors of the public morals who are always on the alert to find something to be shocked at;

who explore the wide domain of art, science and literature to find something immodest, and who attribute impurity where none is intended. The law is founded on reason and common sense, and the statute was enacted to prevent the mails from being used to disseminate the vile literature and indecent pictures with which the country was flooded—those things calculated and intended to create and cater to a morbid appetite for obscenity and lewdness, and to corrupt the morals of the people, and especially the young, who are more susceptible to such influences. United States v. Bebout, 28 Fed. Rep. 522; United States v. Chesman, 19 *Id.* 497. No one in this day can deny the right to the widest latitude of discussion of all subjects of interest to the people. Any thought which may contain the germ of an idea calculated to benefit any human being, when couched in decent language, ought to be disseminated among the people. The question of obscenity in any particular article must depend largely on the place, manner and object of its publication. It would not be proper to discuss certain matters in a family newspaper which might be discussed with propriety in a medical journal. Again, if the writer was in good faith attacking some great, flagrant wrong, the use of plain language, although offensive to ears polite, might be permitted."

WATERING THE MILK.—Considerable ingenuity was displayed by counsel in the case of Hall v. Richardson. A milkman's servant having spilt some of his milk, made up the quantity with water, and so got his master into trouble. He thereupon dismissed his servant, and then prosecuted him for "willful injury," or "malicious damage," under the malicious injuries act of 1861. The magistrate before whom the matter was heard refused to convict, but stated a case. In the divisional court it was argued that, damage having been done to the master by watering the milk, and that act having been willful, the defendant was brought within the statute, because "the words 'wilfully and maliciously' do not necessarily mean more than that the act was done intentionally, and does injury." This contention reduced the whole argument to an absurdity, and the lord chief justice pointedly instanced this by taking the case of a trespasser, who by walking across a field "is liable, though willing to pay half-a-crown for the damage done to the grass, to be sent to prison, with hard labor, for two months. There is some damage done to the grass; the act was certainly intentional, and therefore, on your contention, 'willful' and 'malicious.'" The sole point to be determined was as to the *mens rea*, and there being no evidence of that it was impossible to convict.

Had the defendant been represented by counsel it might have been argued with some plausibility that the act of putting water into his master's milk would in ordinary cases be far from injury, inasmuch as the owner would reap a benefit from a larger quantity of the lacteal fluid. Some thought like this seems to have struck the lord chief justice, for when counsel asked whether putting the water into the milk did not surely injure it, his lordship replied, "I am not so sure of that. Has milk arrived at such a pitch of purity that adding a little water to it must injure it? I would fain hope so, but is it to be assumed to be so?" This point, however, did not arise in this case, as the unfortunate servant had no more desire to benefit his master than he had to injure him, his sole object being to screen himself from the consequences of his own carelessness. The only two redeeming features of the case are the vigilance of the inspector and the consolation that there is at least one milkman in London so jealous of the public welfare as to sacrafice his own servant to propitiate his outraged customers.

The decision has called forth an outcry from milk dealers that they "will be entirely at the mercy of their staff of carmen, and may be fined times without number for supplying milk containing added water, while the abstractor of the milk, for which he substitutes water, goes scathless." We cannot expect milk dealers to understand legal technicalities, and consequently it may be impossible to make them comprehend the true meaning of the decision of which they complain. In case they should discover any of their servants "abstracting" (we take it they mean "feloniously abstracting") milk, we should suggest a prosecution for larceny. But in any case we fail to see that their position is one of greater hardship than that of other employers of labor, *e. g.*, mill-owners repeatedly fined for emitting smoke, which in most cases is due to the negligence of their employes. It is in the interests of the community that the master is made liable for the wrongful acts of his servant, since the employer alone is to blame if he engages untrustworthy workmen.—*Pump Court.*

RECENT PUBLICATIONS.

CRIMES, its Nature, Causes, Treatment, and Prevention. By Sanford M. Green, Late Judge of the Supreme and Circuit Courts of Michigan, Author of "Green's Practice," etc., etc. Philadelphia: J. B. Lippincott Company. 1889.

Judge Green's present work shows careful study of the nature and causes of crime. After an instructive review of these introductory topics, he points out the proper treatment and prevention of its growth. Crime, he says, is a disease caused by inherited tendencies, derived from evil example teachings and associations, engendered by drink, idleness and avarice, showing that we should not judge too harshly of the criminal. Had we been born with the mental and moral characteristics which the criminal inherited, surrounded by the same influences, we would certainly have been capable of committing similar crimes. One of the most interesting questions discussed is upon the conflict between capital and labor as the cause of crime. Judge Green presents this subject from its various stand-points. The evils of our present system, and there are many, are noted by him and the proper remedy and treatment of criminals outlined. The closing chapters are devoted to this subject. One of the most forcible methods of preventing the growth of crime is the reclamation of the children of criminals by removing them from the control of vicious parents and educating them above such influences. The subject of the book is treated in admirable style, and the questions presented should interest and instruct legislators and students of ethics. The book is well bound in cloth and has three hundred and fifty-six pages.

BOOKS RECEIVED.

A TREATISE ON CRIMINAL PROCEDURE. By Stewart Rapalje, author of Treatises on "The Law of Witnesses" "Contempts" and Editor of the "Criminal Law Magazine." San Francisco. Bancroft-Whitney Co. Law Publishers and Law Booksellers. 1889.

THE GREEN BAG. A useless but entertaining Magazine for Lawyers, edited by Horace W. Fuller. Vol. I. Covering the year 1889. The Boston Book Company, Boston, Mass.

LEADING CASES in the Law of Real Property, decided in the American Courts, with notes. By George Sharswood, L. L. D., and Henry Budd, of the Philadelphia Bar. Vol. IV. Notes by Henry Budd. Philadelphia: M. Murphy, Law Bookseller, Publisher and Importer. No. 715 Sansom St. 1889.

QUERIES.

QUERY No. 5.

Some years ago one F, who was being sued by his first wife for a divorce, and finding his wife would get a judgment against him for alimony, wishing to buy a tract of eighty acres, made a proposition to his son to buy it jointly, and the son to take a deed for the entire eighty acres in his name, but the father paid one-half the purchase price, with an oral agreement that the father should have the use of the one-half for life, but that the son should pay the taxes, and at the death of the father the son should have the land. The deed to the whole tract was made to the son, and he has paid all taxes from that time, but the father has had the use and occupancy of one-half of the tract. The father has lately died, and in making his will, he wills of his estate to this son nothing, except this forty acres. Now, the question is, is this will, as far as this particular heir is concerned void. Missouri law wanted. B.

QUERY No. 6.

In a State where judgments are liens upon real estate in the county where docketed in the order in which they are entered and filed, A and B each have judgments against C. A having first judgment, duly entered and filed, he refuses or fails to enforce—C has lands covered in name of another known to A and B. B goes ahead and seeks to enforce collection by execution on this land. Is he subject to first judgment of A or does a right of discovery give B first lien? Cite authorities. L.

QUERIES ANSWERED.

QUERY No. 30.

[*To be found in Vol. 29, Cent. L. J. p. 495.*]

An examination of the statutory laws and of the decisions of the Supreme Court of Kansas reveal nothing which would change the general rule as to such a stipulation or condition in the policy of insurance. S.

QUERY No. 31.

[*To be found in Vol. 29, Cent. L. J. p. 495.*]

An easy solution of the difficulty of this query is found in the correction of one of its statements. It is there said that in California a woman is not of age until her twenty-first year. This is not true. Section 25 of our Civil Code provides: "Minors are: 1. Males under twenty-one years of age. 2. Females under eighteen years of age." Section 27 of same code provides that "all other persons are adults." Consequently it is safer to pay the money over to the heir than to her guardian. L. L.

HUMORS OF THE LAW.

"PRISONER at the bar," said the judge to a man on his trial for murder, "is there anything you wish to say before sentence is passed upon you?"

"Judge," replied the prisoner, "there has been altogether to much said already. I knew all along somebody would get hurt, if these people didn't keep their mouths shut. It might as well be me, perhaps, as anybody else. Drive on, judge, and give me as little sentiment as you can get along on. I can stand hanging, but I hate gush."

HOW HE PAID HIS LAWYER'S FEE.—"My first case in San Francisco," said Attorney James K. Wilder, "was the defense of a young fellow charged with stealing a watch belonging to a Catholic priest. I was appointed by the court, because the prisoner said he had no money.

"The jury returned a verdict of not guilty, and as the defendant was leaving the court room I called him back, and, just as a joke, handed him my card and told him to bring me around the first $50 he got.

"Next day he walked into my office and planked down two twenties and a ten.

" 'Where did you get all that money?' I demanded, as soon as I got over my surprise enough to speak.

" 'Sold the priest's watch' he replied, as he bowed himself out."—*San Francisco Examiner.*

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ADMINISTRATION—Executor's SALE.— An admistrator recovered judgment against one of the heirs of the estate, upon a debt due from su h heir to the estate. Before the judgment lien attached, the heir mortgaged his interest in the lands formerly owned by the decedent to secure a valid debt. The administrator sold the land for the payment of debts of the decedent, and there remained a balance in his hands: *Held*, that such

balance should be applied to the payment of the mortgage.—*Fiscus v. Moore*, Ind., 22 N. E. Rep. 741.

2. ADMIRALTY—Maritime Liens.— A sale by the sheriff of a vessel under execution for debt against the owners does not divest paramount liens, such as the claim for wages of a seaman not guilty of laches. — *Crosby v. The Lillie*, U. S. D. C. (Ala.), 40 Fed. Rep. 367.

3. ADVERSE POSSESSION — Ejectment. — In ejectment, where defendants claim by adverse possession, an instruction that possession by plaintiff's ancestor of a certain lot is no evidence of his possession of the land in controversy if each was under a separate inclosure, is properly refused, where the evidence shows that, though divided into several lots, the whole tract was under a common inclosure, and subject to a common use.—*Kerret v. Nicholas*, Ala., 6 South. Rep. 698.

4. APPEAL—Brief of Evidence.— A report of the trial, consisting of interrogative and responsive dialogue between counsel and witnesses concerning the facts, interlarded with remarks by court and counsel, is not a brief of evidence; and a decision holding it to be, and approving it as a brief, will, on direct exception thereto, be reversed.—*Mahaffy v. Hambrick*, Ga., 10 S. E. Rep. 274.

5. ATTACHMENT—Priority.— The lien of an attachment will not be set aside or postponed in favor of junior attachments, where it appears that the debts sued for were *bona fide*; that the attachments were not sued out for the benefit of the debtors, or to aid them in hindering or defrauding other creditors; and that the only object of the attaching creditor was to get preference for himself.—*Cloflin v. Sylvester*, Mo., 12 S. W. Rep. 508.

6. ATTORNEY—Limitation of Action.—The action of an attorney for his professional fees and emoluments is barred by the prescription of three years, whether the services for which they are claimed be rendered under a contract or under a *quasi* contract. — *Taylor v. City of New Orleans*, La., 6 South. Rep. 723.

7. ATTORNEY'S AUTHORITY.— An attorney who has a note for collection, about the amount of which there is no dispute, cannot, without special authority, bind his client by an acceptance of a less sum than the note's face value and the execution of the receipt in full. — *Hall Safe & Lock Co. v. Harwell*, Ala., 6 South. Rep. 750.

8. BUILDING ASSOCIATIONS—Mortgages — Payment. — The laws of a building association divided its stock into four series of 500 shares each, to be paid for in weekly payments of $1. When the funds amounted to $500, that sum was assigned to some share, which was then termed a "redeemed share," and the holder was there after required to pay interest on the amount monthly, besides the $1 a week, until all the shares in that series were "redeemed." A shareholder had $500 assigned to him, and gave his note for payment, secured by a deed of trust authorizing a sale of the property in case of default in the monthly or weekly payments: *Held*, that default in the payment of the dues was the default in the weekly payments referred to in the trust deed, and authorized a sale of the property.—*Wilson v. Schoenlaub*, Mo., 12 S. W. Rep. 361.

9. CARRIERS OF GOODS—Express Companies. — Under Code N. C. § 1964, the words "whenever tendered" could not be limited further than to require the tender to be made during reasonable business hours, and that a rule of an express company forbidding its agents to receive money for shipment, except on and before the day when trains went to the point of destination, was invalid.—*Alsop v. Southern Exp. Co.*, N. Car., 10 S. E. Rep. 297.

10. CARRIERS OF PASSENGERS — Negligence. — Where the train is stopped at a station to which the company contracted to carry a passenger, the company is liable, if a reasonable time to leave is not afforded, and he is injured if he attempted to alight after it is started and while in motion,—if he does not, in getting off, incur a danger obvious to the mind of a reasonable man. — *Cent. R. R., etc. Co. v. Miles*, Ala., 6 South. Rep. 696.

11. CARRIERS OF PASSENGERS.—A railroad company is not bound to stop its trains at a point other than a station, and where its trains are not accustomed to stop, unless it makes a special contract to carry to that point.—*Wells v. Alabama, etc. R. Co.*, Miss., 6 South. Rep. 737.

12. CHANGE OF VENUE — Costs. — The Indiana act of March 10, 1873, providing that, in all civil and criminal cases where change of venue is taken to another county, the county from which the venue is changed shall be liable for all expenses of the trial, so far as it relates to civil causes was not repealed by Rev. St. Ind. 1881, § 1291, repealing all acts of the general assembly as to pleading and practice so far as they relate to the circuit and superior courts. — *State v. Moore*, Ind., 22 N. E. Rep. 742.

13. CHATTEL MORNGAGES—Wrongful Sale. — If a large amount of the property included in a chattel mortgage consists of many different articles, which could be easily and profitably offered for sale separately, or in lots or parcels suitable to the convenience of the bidders, a sale of the whole in a lump, or in two separate lumps, might, in some cases, be regarded as an unfair mode of sale, especially if it were shown that the property did not bring its actual or market value at the sale.—*Wygal v. Bigelow*, Kan., 22 Pac. Rep. 612.

14. CHATTEL MORTGAGE.— A mortgagee's right to recover the value of the mortgaged property, which has been seized under an attachment and sold, is not affected by the fact that he has assigned the mortgage as collateral security for a debt, if before suit is brought the mortgage is surrendered to him by the assignee. — *Eddy v. McCall*, Mich., 43 N. W. Rep. 911.

15. COMPROMISE—Substitution — Set-off. — Where, in compromise of conflicting claims, defendant agrees to substitute his note for that of third persons, which had been placed by the payees in plaintiff's hands as collateral security, and plaintiffs accordingly surrender this note, they are entitled to a note free from any set off which defendant has against the payee of the original note.—*Levy v. Bloch*, Ala., 6 South. Rep. 745.

16. CONSTITUTIONAL LAW— Intoxicating Liquors.—The general local option law, has a general repealing clause, as to all laws in conflict with it, but in § 9 expressly provides that no election shall be held under it "for any county, city, town, or any other place in this State, where by law the sale of spirituous liquors, is already prohibited either by high license, local option, or other legislation, so long as these local laws remain in force:" *Held*, that § 9 was intended to save from repeal all local laws passed prior to the passage of the act, and approved by the governor, whether they had been adopted by a vote of the people, if so required therein, or not.—*McGruder v. State*, Ga., 10 S. E. Rep. 281.

17. CONSUITUTIONAL LAW — Intoxicating Liquors. — That port on of § 1, ch. 32, Code 1887, which provides that no person, without a State license therefor, shall "keep in his possession, for another, spirituous liquors," etc., is unconstitutional and void. — *State v. Gilman*, W. Va., 10 S. E. Rep. 283.

18. CONTRACT — Instructions. — Where plaintiffs sue upon a contract that has been altered after it was signed by defendant, and procure the court to instruct that it required a ratification of the contract by defendant, after the alteration, to give it validity, thus abandoning the contract, unless the proof shows a ratification, and that issue is found against them, they cannot complain of the action of the court in giving the instruction. — *Sithen v. Murphy*, Ark., 12 S. W. Rep. 499.

19. CONTRACTS—Parol Evidence.—Where by the terms of a written contract, defendant sold to plaintiffs certain chattels, and his good will in the practice of medicine, and agreed not to practice in a certain district for a number of years, "in consideration of which said second parties [plaintiffs] hereby agree to pay said first party [defendants] $100," the stipulation as to the consideration is contractual, and cannot be varied by oral evidence. — *Pickett v. Green*, Ill., 22 N. E. Rep. 737.

XUM

20. CONTRACT—Assumpsit. — Where a party receives merchandise and uses the same, there is an implied contract to pay the price. — *Boyd v. Heise*, La., 6 South. Rep. 714.

21. CORPORATIONS—Garnishment. — Where garnishee process against a foreign corporation, to show cause why judgment should not be rendered against it, is served on officers of the corporation, who make affidavit that they are not principal officers, and the corporation appeals only specially to move to quash the proceedings on the ground of no service, no judgment can be rendered against the corporation. — *First Nat. Bank v. Burch*, Mich., 43 N. W. Rep. 453.

22. COURTS—Jurisdiction.—In all civil cases within its jurisdiction, under the constitution, the supreme court has authority to look into both the facts and the law, while the court of appeals can exercise such right only in cases involving more than $500; in which it can pass on facts and law.—*State v. Judges*, La., 6 South. Rep. 716.

23. CREDITOR'S BILL.—A creditor's bill alleged that, after complainant's claim had accrued, but before judgment, the debtor fraudulently assigned his contract for the purchase of certain land to his wife; that the vendor executed a deed to her, the debtor paying the price; that debtor's wife mortgaged the land on the day the sheriff levied his execution on the same; that debtor executed a chattel mortgage on his stock in trade, in trust for certain creditors; that the trustees sold the stock to debtor's wife, who executed a chattel mortgage on the same to them, that the sale of the stock, the chattel mortgage and the real estate mortgage were shams: *Held*, that the bill would not be sustained, as the remedy at law was adequate. — *Brock v. Rich*, Mich., 43 N. W. Rep. 580.

24. CRIMINAL LAW—Accomplice.—On a trial for theft of a mule, a witness for the State testified that he was employed by the owner of the animal to look after and water it; that he found it in defendant's possession; that defendant told him that he intended to appropriate it; that the owner offered a reward for the return of the animal; and that witness did not inform him that defendant had the animal until a year afterwards when, having been arrested for another theft, he made terms with the State to turn informer: *Held*, that the testimony of the witness must be treated as accomplice testimony.—*Chumley v. State*, Tex., 12 S. W. Rep. 491.

25. CRIMINAL LAW—Special Judge. — Under Rev. St. Mo., 1879, § 1878, as a defendant is entitled to only one application, based upon the disqualification of the judge, the word "or" will be construed to mean "and," and the election of a special judge merely "to decide the defendant's application for a change of venue" is unauthorized, and confers no jurisdiction, and any consent of defendant to the trial of a cause upon its merits by such special judge is of no avail.—*State v. Bulling*, Mo., 12 S. W. Rep. 356.

26. CRIMINAL LAW—Perjury. — On a prosecution for perjury by one who swore on a trial for rape that he witnessed the act, and that the prosecutrix voluntarily yielded, it appeared that the prosecutrix was examined by physicians, at the instance of her father, to determine whether she had been in the habit of having sexual intercourse: *Held*, that evidence that the prosecutrix appeared to understand the nature of the examination, and that she made no objection, was objectionable as hearsay.—*State v. Day*, Mo., 12 S. W. Rep. 365.

27. CRIMINAL LAW—Rape— Consent. — Under the evidence held that, though it did not appear that she resisted or that force was used when intercourse was effected, the evidence showed want of her consent; as resistance and force are only facts bearing on the question of consent, and, in case of mental weakness, less evidence of want of consent is necessary than where the female is of sound mind.— *State v. Cunningham*, Mo., 12 S. W. Rep. 376.

28. CRIMINAL LAW —Carrying Weapons. — *Held*, upon the facts that defendant was not guilty of violating Pen. Code Tex. art. 163, prohibiting the carrying of a pistol within one-half mile of a polling or voting place. —*Barkley v. State*, Tex., 12 S. W. Rep. 495.

29. CRIMINAL LAW—Murder. — On a trial for murder, committed as the result of a quarrel, where there is evidence that defendant had in good faith abandoned the original difficulty, and that deceased and his wife renewed, provoked, and pressed the conflict, defendant is entitled to an instruction as to the law in case of abandonment of the difficulty by defendant.—*Jackson v. State*, Tex., 12 S. W. Rep. 501.

30. CRIMINAL LAW — Confessions. — One on trial for murder had stated, on his own examining trial, that what he testified as State's witness on the examining trial of another, accused of the same offense, was the truth, and that he had no more to say. Such testimony was reduced to writing, but was sworn to by defendant, and was not attested to by the magistrate: *Held*, that it was inadmissible against him, as a "voluntary statement," under Code Crim. Proc. Tex. art. 262.—*Walker v. State*, Tex., 12 S. W. Rep. 503.

31. CRIMINAL LAW — Separation of Jury. — After the jury had been impaneled and sworn, and one witness examined, on trial for theft, a juror separated from his fellows during adjournment,—a whole night. His affidavit alleges that "no one said anything to him about the case," and that his separation in no way influenced his finding: *Held*, that the separation was ground for new trial, under article 777, subd. 8, providing that misconduct of the jury shall be ground for a new trial. — *Kelly v. State*, Tex., 12 S. W. Rep. 505.

32. CRIMINAL LAW— Larceny. — A conviction for the theft of a cow cannot be had, under an indictment which alleges the ownership in B, and the possession in A and W, where the evidence shows that the possession was not in A and W jointly, but in B alone.—*Owens v. State*, Tex., 12 S. W. Rep. 506.

33. CRIMINAL LAW— False Pretenses. — Facts held sufficient to sustain verdict of guilty of obtaining money under false pretenses. — *State v. Jackson*, Kan., 22 Pac. Rep. 619.

34. CRIMINAL PRACTICE—Theft.—Under Pen. Code Tex. art. 727, in order to convict, the jury must find that the intent to deprive the owner of the value of the property existed at the very time of acquisition.—*Nichols v. State*, Tex., 12 S. W. Rep. 500.

35. CRIMINAL PRACTICE—Misconduct of Jury.—A mere statement by one juror to his fellows that defendant was a man of bad character; that he had been charged with divers thefts; that he had been known to harbor thieves; and that his witnesses were all of bad character,— is not *per se* ground for new trial. It must appear that the verdict was probably influenced by such statement.—*Cox v. State*, Tex., 12 S. W. Rep. 493.

36. CRIMINAL PRACTICE—Larceny— Name. — In charging the commission of a larceny, the full christian name of the owner of the stolen property should be given, if known, and where it is unknown that fact should be stated, and the defendant may take advantage of a defect in this respect where the objection is seasonably made.—*State v. Rook*, Kan., 22 Pac. Rep. 626.

37. CRIMINAL PRACTICE—Information. — It is not correct practice in a criminal cause, after the jury is sworn and the trial commenced by placing a witness upon the stand, to move to exclude all testimony under the indictment or information, on the ground that it does not charge a public offense. — *State v. Jessup*, Kan., 22 Pac. Rep. 627.

38. CROSS EXAMINATION— Bias. — The accused has a right to show, on cross-examination of a witness for the State, the feeling of the witness towards him, and to ask him as to a particular act of hostile feeling shortly after the commission of the offense; such as an attempt on the part of the witness to induce a party to join a crowd to lynch the accused. If he refuses to answer, or answers evasively, the accused can prove

the fact by any other competent witness.— *State v. McFarlin*, La., 6 South. Rep. 728.

39. CROSS-EXAMINATION — Leading Questions. — It is largely within the discretion of a trial court to permit leading questions to be asked; yet, unless there is some special or apparent reason why they should be, the court should not permit them to be asked continuously concerning the material and important facts to be proven, when the witness is a willing witness, and of full age.—*State v. Spidle*, Kan., 22 Pac. Rep. 620.

40. DAMAGES—Remote Cause. — Defendants, knowing a county treasurer to be a defaulter, loaned him money and certificates to enable him to have his accounts audited, and to conceal from the board of county commissioners the fact of his embezzlement of the funds of the county, after which he embezzled a further sum, and fled from the territory: *Held*, that the damage sustained by the county by reason of such act of defendant was too contingent, remote, and indefinite to constitute a cause of action. — *County of Nelson v. Northcote*, Dak., 43 N. W. Rep. 897.

41. DEDICATION.—Marking a space in a plat of a town site and designating it as "seminary square" is a sufficient dedication for public purposes.—*Board v. Wilgus*, Kan., 22 Pac. Rep. 615.

42 DEED— Homestead — Reformation. — Where land held as a homestead by the husband and wife, and owned by them as tenants in common, is conveyed by their joint deed with all the formalities essential to a valid conveyance of the homestead, and of any individual interest of the wife in the land as her statutory separate estate, and the consideration is commensurate with the value of the whole estate, the purpose of the instrument is to pass to the vendee the entire fee.—*Parker v. Parker*, Ala., 6 South. Rep. 740.

43. DEEDS—Consideration. — Where a vendor, an old man without family, deeds his farm to a nephew in consideration of the latter's promise to move on the place and take care of the vendor during his life, the failure of vendee to make good his promise for two years is a failure of consideration, entitling the vendor to reconveyance.— *Shepardson v. Stevens*, Mich., 43 N. W. Rep. 918.

44. DIVORCE—Jurisdiction.—A person who has been a *bona fide* resident for one year is entitled to sue for divorce in Mississippi, though the causes for divorce occurred in another State.—*Jones v. Jones*, Miss., 6 South. Rep. 712.

45. DURESS—Note.—A note is not procured by coercion or other undue means where it appears that plaintiff, after judgment in his favor in ejectment, procured a writ of restitution and, accompanied by the sheriff, went to the premises, which were in defendant's possession, for the purpose of executing the writ, when plaintiff rather than have himself and family turned out executed the note in question in payment of the rent.—*Davis v. Rice*, Ala., 6 South. Rep. 751.

46. EJECTMENT — Equitable Titles. — Under Rev. St. Tex. art. 3930, providing that when the terms and conditions of pre-emption shall have been complied with, and the pre-emptor shall have paid the price of the land, etc. the commissioner shall issue a patent to the pre emptor, one who has filed his location for pre-emption, but has not received a patent, has only an equitable claim to the land, which cannot prevail in an action at law in the federal court against a legal title asserted by another. — *Lerma v. Stevenson*, U. S. C. C. (Tex.), 40 Fed. Rep. 356.

47. EMINENT DOMAIN—Evidence.—At the trial of a case for damages for the taking of a right of way for a railroad through farming land, a farmer living in the neighborhood, who had knowledge of the farm for years, knew its location, advantages, character of soil, and its market value compared to other lands surrounding it, is a competent witness, and qualified to testify to the value of the land taken, and to the damages to the whole tract. — *Chicago, etc. R. Co. v. Cosper*, Kan., 22 Pac. Rep. 634.

48. EMINENT DOMAIN—Procedure.—The report of commissioners appointed to condemn a right of way for a railroad is not complete and final until it is filed in the office of the county clerk, and the land-owner may take an appeal from their award at any time within ten days after it is so filed.—*Kansas City, etc. R. Co. v. Hurst*, Kan., 22 Pac. Rep. 618.

49. FALSE REPRESENTATIONS—Contract.—The assignor of a contract to purchase land is not guilty of fraudulent concealment in failing to disclose to his assignees the fact that his contract for purchase is a verbal one, where his vendor executes his part of the contract by making and depositing a deed to the land. — *Griel v. Lomax*, Ala., 6 South. Rep. 741.

50. FALSE REPRESENTATION — Sale of Land. — In an action for false and fraudulent representations regarding the quantity of land in a certain tract, the plaintiff's right of recovery cannot be defeated on the ground that he might have ascertained the truth by measuring the tract himself.—*Ledbetter v. Davis*, Ind., 21 N. E. Rep. 744.

51. FEDERAL COURTS. — The federal court will allow plaintiff, before verdict, in an action removed from a State court in Georgia, to discontinue his suit as to part of the amount sued on, which he could do before removal under Code Ga. § 3479, authorizing amendments at any stage of the cause as matter of right.— *Nussbaum v. Northern Ins. Co.*, U. S. C. C. (Ga.), 40 Fed. Rep. 337.

52. FRAUDULENT CONVEYANCES—Husband and Wife.—A conveyance made by a husband to his wife in order to defraud his creditors will be set aside at their suit, though the land was originally bought with the wife's money, where she has allowed the title to stand in her husband's name, for the purpose of giving him credit. —*Lowentrout v. Campbell*, Ill., 22 N. E. Rep. 744.

53. GOOD WILL — Insurance Agency. — An insurance agency, and its good will, do not constitute equitable assets for the agents' creditors; the agency of an insurance company being transferable at the pleasure of the company.—*Tierney v. Klein*, Miss., 6 South. Rep. 739.

54. HIGHWAYS—Establishment.— A petition was presented to the board of county commissioners requesting the opening of a section line road pursuant to the provisions of chapter 981, Laws 1872, and the board granted the petition, and directed the township officers to cause the road to be opened. An owner of land over which the road was established, without asking for any damages, undertook to appeal from the decision of the board to the district court: *Held*, that no appeal would lie.—*Kent v. Board*, Kan., 22 Pac. Rep. 610.

55. HUSBAND AND WIFE — Wife's Separate Estate. — Money paid to a husband's creditor by a debtor of the wife cannot be applied to the debt due the wife for her individual money, though it was paid on the express agreement of the husband that it should be so applied, where no authority of the wife is shown for such transaction. — *Arnett v. Glenn*, Ark., 12 S. W. Rep. 497.

56. INDIAN TREATIES. — Where an Indian treaty provided that it should be obligatory as soon as the same should be ratified by the president and senate: *Held*, that it did not take effect until signed by the president, although it had been previously ratified by the senate, and accepted by the Indians. — *Shepard v. Northwestern Life Ins. Co.*, U. S. C. C. (Mich.), 40 Fed. Rep. 341.

57. INSURANCE—Insurable Interest. — The grantee in a warranty deed contracted to pay to the grantor whatever he should realize on a sale of the property over and above a certain amount. In a suit by the grantor to have the deed declared a mortgage, a decree was entered dismissing the bill absolutely; which decree was never appealed from: *Held*, that the grantor, after the execution of the deed, had no insurable interest in the property.—*Balow v. Teutonia Farmers' Mut. Fire Ins. Co.*, Mich., 43 N. W. Rep. 924.

58. JUDGMENT— Lien — Priority. — Under Code Miss. 1880, § 1738, the priority of the lien of two judgments in C county depends on the priority of the enrollment of

the abstracts thereof in said county, without regard to the order of the rendition of the judgments in H county. —*Hamilton-Brown Shoe Co. v. Walker*, Miss., 6 South Rep. 713.

59. JUDGMENT — Lien. — The lien of a judgment is superior to that of an unrecorded mortgage.—*Cleveland v. Shannon*, Ark., 12 S. W. Rep. 497.

60. JURY—Challenges.— Under the statute in relation to struck juries, no peremptory challenges are allowed to any of the jurors composing the panel as finally made up.—*Watson v. St. Paul City Ry. Co.*, Minn., 43 N. W. Rep. 904.

61. JURY—Separation. — There is no separation of a jury when a juror is permitted to go to a water-closet, which has been previously examined by a deputy-sheriff to see that no one is there, and goes in there, and the door is kept partially open, and the jury, under the charge of the deputy, is kept in front of the same, at a convenient distance.—*State v. Nockum*, La., 6 South. Rep. 729.

62. JUSTICES OF THE PEACE. — A justice of the peace has the power to act in a criminal proceeding without the consent of the prosecuting attorney, where he takes security for costs, and the board of supervisors cannot refuse to allow him fees when he has so acted.—*Jaminet v. Board of Supervisors*, Mich., 43 N. W. Rep. 910.

63. LANDLORD AND TENANT.— A tenant may show that the title of his landlord under which he entered has passed by operation of law to a third party, and that he holds under the new owner.—*Rhyne v. Guevara*, Miss., 6 South. Rep. 736.

64. LANDLORD'S LIEN. — Where a landlord purchases the cotton crop of his tenant, though he thereby extinguishes his lien, he acquires, as against a prior mortgagee, an absolute title to an undivided interest in such cotton, equal to the amount of his lien. — *Titsworth v. Frauenthal*, Ark., 12 S. W. Rep. 498.

65. MASTER AND SERVANT—Negligence. — Risks of employment not concealed but open and visible and known to the employee must be deemed to have been assumed by continuing in the employment. — *Fisher v. Chicago, etc. Ry. Co.*, Mich., 43 N. W. Rep. 926.

66. MASTER AND SERVANT— Negligence. — In an action against a railroad company for personal injury to an employee, caused by the negligence of a co-employee, the court instructed that to make a *prima facie* case plaintiff "must prove either that he was not to blame or that the company was. The company, in replying, may defend successfully by disproving either proposition; that is, by showing either that the plaintiff was to blame or that the company was not. By 'blame,' I mean the 'want of due diligence.' The measure of diligence which the law imposes on railroad companies in reference to employees, and on the conduct of employees in reference to their companies, is ordinary diligence or common prudence:" *Held*, that there was no error in the instruction, under Code Ga. § 3036, — *Central R. Co. v. Lanier*, Ga., 10 S. E. Rep. 279.

67. MECHANICS' LIENS — Waiver. — Retention by a seller of title to machinery placed on land until the price is paid, with a reservation of the right, in case of default in payment, to take possession of and remove such machinery without process, is not a waiver of the lien given by Code Tenn. § 2739, on any lot of ground for the price of machinery furnished or erected thereon. *Case Manuf'g Co. v. Smith*, U. S. C. C. (Tenn.), 40 Fed. Rep. 339.

68. MECHANICS' LIENS—Fixtures.—Const. Tex. art. 16, § 37, which provides that "mechanics shall have a lien, and the legislature shall provide for enforcement of said liens," creates the lien, and only leaves it for the legislature to provide the means of its enforcement; and a mechanic's lien, filed for record within the time allowed by the statute, relates back to the time the work was done or the material was furnished, and takes precedence of any other lien acquired since that time.—*Keating Implement & Machine Co. v. Marshall Electric Light Co.*, Tex., 12 S. W. Rep. 489.

69. MONEY HAD AND RECEIVED. — At a tax sale all bidders under sales for the taxes of 1883 were bound, as the plaintiff knew, to take the same land for the taxes of 1882 also, and the plaintiff bid and paid to the treasurer the amount of the taxes for 1883, but refused to make payment for 1882 taxes. The treasurer thereupon, without authority from plaintiff, turned the money over to the State, and prepared certificates of sale, for both years, of land sufficient to equal the amount paid in, which certificates the plaintiff refused: *Held*, that the plaintiff, if he demanded a return of the money, was entitled to maintain an action against the treasurer for the same, as for money had and received. —*O'Donnell v. Perin*, Mich., 43 N. W. Rep. 774.

70. MORTGAGES—Cancellation— Mandamus. — *Mandamus* is a proper remedy to compel the erasure of the inscription of an invalid or defunct or perempted mortgage or privilege; but the remedy cannot be invoked as a means to avoid the effect of another contract intended to affect the property of the party complainant.—*Willis v. Wasey*, La., 6 South. Rep. 730.

71. MORTGAGES — Redemption. — Under Code Ala. § 1880, providing that it shall be a condition precedent to the right to redeem land from a foreclosure sale that possession of the land was delivered to the purchaser within ten days after the sale, on demand, and that the party seeking to redeem must prove the delivery, one cannot redeem where it appears that members of his household remained on the premises resisting the purchaser's entry, and were, after the lapse of ten days, removed, with their personal property, and that of the mortgagor, by the sheriff. — *Nelms v. Kennon*, Ala., 6 South. Rep. 744.

72. MORTGAGES — Satisfaction. — Where defendants procure a loan from plaintiff to pay a mortgage on their land, on the agreement that after its payment and discharge of record a new mortgage should be executed to plaintiff to secure the loan, but, instead, after discharging the mortgage, convey the land to a third person, having full knowledge of the loan and agreement, with intent to defraud plaintiff, the latter is not a mere volunteer, and the satisfaction of the mortgage will be canceled, and plaintiff subrogated to the rights of the mortgagee.— *Wilton v. Mayberry*, Wis ,43 N. W. Rep. 902.

73. MUNICIPAL CORPORATIONS—Markets.—A municipal corporation has the power to contract with an individual, to authorize him to build a market house, rent stalls, and collect dues, during the specified period, with the consideration that the land, which is his property, and the improvements upon it, shall be conveyed to the city, and that the same, at the expiration of the term, shall be turned over absolutely, in good order, to the corporation.—*State v. Natal*, La., 6 South. Rep. 722.

74. MUNICIPAL CORPORATIONS — Annexation. — The statutes conferring on cities of the second class power to extend their boundaries, so as to include adjacent land that has been subdivided into blocks and lots, is not unconstitutional, because the legislature is restricted by § 21, art. 2, of the constitution, from conferring powers of local legislation or administration on any local agency except the tribunals transacting county business.—*City of Emporia v. Smith*, Kan., 22 Pac. Rep. 616.

75. MUNICIPAL CORPORATIONS—Annexation.—A city of the first class cannot extend its limits so as to include unplatted territory of over five acres, against the protest of the owner thereof, unless the same is circumscribed by platted territory that is taken into said city. —*Union Pac. Ry. Co. v. City of Kansas City*, Kan., 22 Pac. Rep. 633.

76. MUNICIPAL CORPORATION — Franchises. — A municipal corporation which has contracted that a bonus shall be paid by a company to which it has granted street-railway privileges, in lieu of taxes, cannot, after agreeing to remit the bonus and to receive the taxes in its place, and after collecting such taxes, sue to recover the bonus, however true it be that the immunity from

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taxes was illegal. It cannot claim both. — *City of New Orleans v. Cresent City R. Co.*, La., 6 South. Rep. 719.

77. MUNICIPAL CORPORATIONS— Constitutional Law.— Charter of Port Huron, Mich. ch. 18, §§ 1, 2, which make it the duty of every person owning, occupying, or having an interest in real estate in that city to maintain sidewalks, and authorize the common council to provide for the punishment by fine or imprisonment, or both, of any person who neglects to comply with the resolution or ordinance relative to the construction or maintenance of sidewalks, are unconstitutional. — *City of Port Huron v. Jenkinson*, Mich., 43 N. W. Rep. 923.

78. NEGLIGENCE— Railroad Company.—*Held*, that deceased under Code Ga. § 2972 was guilty of gross negligence in walking on defendant's track.—*White v. Central R. R.*, Ga., 10 S. E. Rep. 273.

79. NEGLIGENCE — Warnings. — In an action for personal injury, against a railroad company, the court, after charging that warnings should not only be given in the usual and customary manner, but also in such manner as ordinary care and diligence required, further instructed that if the warnings were given in the customary manner alone, defendant would be relieved from liability: *Held*, not error. — *Georgia Pac. R. Co. v. Freeman*, Ga., 10 S. E. Rep. 277.

80. NEGLIGENCE—Exemplary Damages.— The liability of a railroad company for exemplary damages does not depend on its ability to keep its road in such condition that it can be safely operated. — *Texas Trunk Ry. Co. v. Johnson*, Tex., 12 S. W. Rep. 482.

81. NEGLIGENCE—Stock-killing.— As the cattle-guard was not in an unlawful or forbidden condition, under the circumstances, and as the cattle were at large contrary to law, trespassers upon defendant's right of way, the defendant's servants, engaged in operating its trains, were not bound to anticipate such trespassing by looking ahead, or by managing a train with reference to such a contingency. — *Stacey v. Winona, etc. R. Co.*, Minn., 43 N. W. Rep. 905.

82. NEGLIGENCE—Accident— Crossings. — In an action against a railroad company for personal injury, a declaration which alleges negligence in the single assertion that defendant by its servants "so carelessly and improperly managed the said locomotive engine and train" that by its negligence and improper conduct" the train struck the sleigh containing plaintiff, etc., does not allege the wrong with requisite certainty, and objection may be taken to it at the time of the trial, without a previous demurrer. — *Schindler v. Milwaukee, etc. Ry. Co.*, Mich., 43 N. W. Rep. 911.

83. NEGLIGENCE OF SERVANT.—In an action against an express company for negligence of its servant in driving over plaintiff with a horse and wagon, where the servant testified that the horse was nervous and prancing, and other evidence tended to show that he apparently hurried across the track, when plaintiff was knocked down, it is a question for the jury whether defendant drove at too high a rate of speed. — *Post v. United States Exp. Co.*, Mich., 43 N. W. Rep. 636.

84. NEGOTIABLE INSTRUMENT — Collateral Security. — Plaintiff's intestate executed his note to defendant H, and deposited with him the note of defendant L, as collateral security; and H assigned both notes, as collateral to S. Plaintiff sued for the amount of L's note: *Held*, that defendant S held L's note in trust, for the estate of plaintiff's intestate, subject to the payment to S, of the note of plaintiff's intestate to H, and was entitled to judgment against L for the amount of the note, without first establishing his claim against intestate's estate.—*Williams' Adm'r v. Lumpkin*, Tex., 12 S. W. Rep. 488.

85. NEGOTIABLE INSTRUMENT— Married Women. — An accommodation indorser of the promissory note of a married woman cannot avail himself of any defense arising from her coverture. By his indorsement he has guaranteed that the maker of the note was competent to contract in the manner in which, by the paper, she purported to contract. — *Edmunds v. Rose*, N. J., 18 Atl. Rep. 748.

86. NEGOTIABLE INSTRUMENT. — Evidence reviewed with reference to whether note sued on belonged to plaintiff or to the bank to whom it was made payable.—*Pinkham v. Cockell*, Mich., 43 N. W. Rep. 921.

87. PARTITION—Jurisdiction.— Since in Missouri a partition proceeding is but a civil action, the circuit court has jurisdiction of an answer seeking to charge the interests of some of the parties with advancements made to them by the ancestor's executrix, under an agreement that they should be so charged, under Rev. St. Mo. § 3521.—*Green v. Walker*, Mo., 12 S. W. Rep. 353.

88. PARTITION — Limitation of Actions. — An action brought by parties claiming to own undivided interests in an immovable, against parties possessing and claiming to own in indivision the whole immovable, and asking judgment decreeing their ownership and for partition, combines the double character of petitory action and an action for partition. — *Le Blanc v. Robertson*, La., 6 South. Rep. 720.

89. PARTNERSHIP—Evidence.— In an action against a party, to charge him with a debt as a copartner, it is competent for him to prove that at the time the debt was contracted the partnership had been dissolved; but, in order to render the proof admissible, it must tend to show an actual dissolution of the partnership relation.—*Dawson v. Pogue* Oreg., 22 Pac. Rep. 687.

90. PAYMENTS—Voluntary Payments.— Payments voluntarily made cannot be recovered back upon grounds which would have constituted a defense, and were known to the plaintiff at the time of payment. — *The Nicanor*,, U. S. D. C. (N. Y.), 40 Fed. Rep. 361.

91. PRACTICE—Autrefois Convict. — Rev. St. Mo. 1879, § 1929, provides that, where the punishment is alternative, the jury may assess it, and the court shall render judgment accordingly, except as otherwise provided. Sections 1930 1933 provide that, where the punishment is assessed in excess of the highest penalty allowable, the court may reduce it to the highest penalty, and, where assessed below the lowest penalty, the court may raise it to the lowest allowable, but may in any case reduce a penalty fixed by a jury. Section 1965, provides that proceedings for new trials may be had on the motion of defendant: *Held*, that where the jury has assessed the minimum penalty, the court has no authority, on its own motion, to set aside the verdict, and order a new trial. — *State v. Snyder*, Mo., 12 S. W. Rep. 369.

92. PRACTICE—Suit in Forma Pauperis. — A claim can be interposed under the act of 1870 upon an affidavit *in forma pauperis* made by the claimant himself, but not upon a like affidavit made by his agent. The privilege of making oath to belief, good faith, etc., in lieu of giving bond and security, is personal, and cannot be exercised by proxy. — *Haddon v. Larned*, Ga., 10 S. E. Rep. 278.

93. PRACTICE—Remarks of Counsel.—On the trial of an indictment for receiving stolen goods, the prosecuting attorney, in opening the case said to the jury: "One reason why I am more prejudiced against this man is because he has committed perjury in the recorder's court, for the purpose of assisting one of his fellow prisoners." Upon objection made to this by defendant's counsel, instead of rebuking it, the court remarked: "I must say that considerable of that has come under my own notice. I don't see how you are going to deny that: "*Held*, gross error.—*People v. Moyer*, Mich., 43 N. W. Rep. 928.

94. PRACTICE — Remittitur on Appeal. — A *remittitur* from the supreme court directing the lower court to give judgment for plaintiff, granting him a perpetual injunction, and awarding him compensation for the acts of defendants, does not authorize the court below to open the case and take further evidence, nor to make any new or additional findings of fact.— *Raisbeck v. Anthony*, Wis., 43 N. W. Rep. 900.

95. PRACTICE — Arraignment and Plea. —In a capital case, the accused must be arraigned and required to

plead to the information filed against him. The record ought to show affirmatively that the accused was arraigned, and that he pleaded before trial.—*State v. Wilson*, Kan., 22 Pac. Rep. 622.

96. PRINCIPAL AND AGENT.—The silence of a principal, after knowledge of an unauthorized or illegal act of his agent, is equivalent in law to an acquiescence in, and ratification of, the act or conduct of the agent. — *Raymond v. Palmer*, La., 6 South. Rep. 692.

97. QUIETING TITLE.—Complainant sued to set aside two deeds made by his deceased wife to their son, conveying land on which complainant and his wife had resided as a homestead, claiming that the land was originally paid for by himself, and conveyed to his wife, who had devised it to him. It appeared that, while defendant lived in the house with his father and mother when their deeds were made, he knew nothing of their existence until after his mother's death. He paid nothing for the property conveyed, and the deeds were never delivered to any one for defendant, and the first he knew of their existence was when they were placed on record by one P, who had possession of them, but who had no instructions to deliver them to defendant for his mother: *Held*, that complainant should be quieted in his possession of the land, the deeds never having become operative by delivery.—*Lyon v. Lyon*, Mich., 43 N. W. Rep. 586.

98. RAILROAD COMPANY—Sale.—At a meeting of stockholders of an uncompleted railroad, held after a proposition for its purchase had been made, at which meeting stockholders representing 680, out of 750 shares of stock were present, a resolution accepting the proposition, and authorizing the sale of the road by the board of directors, was passed unanimously: *Held*, that a sale of the road by the president and secretary, in pursuance of a resolution passed by the directors under the foregoing authority, was legal. — *Young v. Toledo, etc. R. Co.*, Mich., 43 N. W. Rep. 632.

99. RAILROAD COMPANIES— Negligence. — Under Code Miss., § 1059, providing that, in actions against railroad companies for injuries to person or property, proof of the injury inflicted by the running of locomotives or cars of such company, shall be *prima facie* evidence of the want of reasonable skill and care on the part of its employees, the presumption created by the statute ceases when the *prima facie* case made out by proof of injury is rebutted by evidence on the part of defendant. —*Jones v. Bond*, U. S. C. C. (Miss.), 40 Fed. Rep. 285.

100. RAILROAD COMPANIES — Fences.—On each side of defendant's railroad track was what was known as "F street," and used as a public street, though it was not shown to have been regularly laid out or extended over the tracks. Its general direction was due north and south, but on the south side of the tracks it deflected to the west, and ended at the station grounds, so that, if it had been extended across the tracks in the same direction, it would not have been connected with that which was called "F. street," on the north side: *Held*, that there was no continuous street at that point, and therefore Pub. Acts Mich. 1887, p. 339, requiring streets crossing railway tracks to be fenced, and provided with cattle-guards, did not apply.— *Stern v. Michigan Cent. R. Co.*, Mich., 43 N. W. Rep. 587.

101. REPLEVIN—Pleading. — Under Rev. St. Ind. 1881, § 1267, providing that, if the plaintiff in an action for the possession of personal property claims immediate possession thereof, he must make an affidavit showing certain facts, it is proper to incorporate such affidavit in the complaint.—*Turpie v. Fagg*, Ind., 22 N. E. Rep. 743.

102. SALE—When Title Passed.—Facts herein held sufficient to support a finding that there was an executed contract for the sale of lumber.—*Thayer v. Davis*, Wis., 43 N. W. Rep. 90.

103. SALE— Rescission. — When goods are bought as corresponding to samples, and so appear, a reasonable delay in examining is proper; but, when they are not supposed to conform to sample, great promptness is required on the part of the vendee both in examining and rescinding the sale with as little delay as the usual methods of the business will permit. — *Farrington v. Smith*, Mich., 43 N. W. Rep. 927.

104. SPECIFIC PERFORMANCE — Laches. — The unexplained delay for eight years, in enforcing an agreement for a deed, which by its terms was to be performed within three months, constitutes such laches as will prevent a decree for specific performance.— *McCabe v. Mathews*, U. S. C. C. (Fla.), 40 Fed. Rep. 338.

105. SPECIFIC PERFORMANCE — Parol Contracts. — Equity will not aid in enforcing specific performance of a parol contract for the purchase of land, where the purchaser seeks to take it from the operation of the statute of frauds by alleging part payment, unless the contract is definitely alleged, and the proof clearly establishes the particular contract set up in the bill. — *Allen v. Young*, Ala., 6 South. Rep. 747.

106. STATE AUDITOR—Warrants.— It is the duty of the State auditor to issue his warrant upon the State treasurer to pay a debt due to the contractors for work done by them in the construction of the State-house, where it is admitted that everything is regular, and legal and valid, and that a sufficient fund has been provided for by statute, known as the "State-house Fund," with which to pay such debt. — *Evans v. McCarthy*, Kan., 22 Pac. Rep. 631.

107. TAXATION — Notice to Redeem. — A notice to redeem from a tax sale, issued and served under the provisions of § 121, ch. 11, Gen. St. 1878, in which it is stated "that the time for redemption from said sale will expire sixty days after service of this notice," is sufficient, the other requirements of said section being observed.—*Parker v. Branch*, Minn., 43 N. W. Rep. 907.

108. TAXATION—Exemption. — One engaged in cutting and making coats and pants out of jeans cloth, which has been already manufactured by another, is not a manufacturer of textile fabrics, in the sense of article 207 of the constitution, and "the capital, machinery, and other property employed" therein are not exempt from taxation.—*Cohn v. Parker*, La., 6 South. Rep. 718.

109. TAXATION—Levy—Public Institution.—*Held*, under the facts that "The Bridgeton Academy" is a public institution and a levy of tax by it for school purposes was legal.—*State v. Vaughan*, Mo., 12 S. W. Rep. 507.

110. TAXATION—Payment.— Where a county treasurer deposits in a bank receipts for taxes due from the bank, receives credit for the amount of such taxes, and afterwards draws the money out by check, the transaction amounts to a payment of the taxes. — *Wasson v. Lamb*, Ind., 22 N. E. Rep. 729.

111. TAXATION—Exemption.— The Detroit Home and Day School was incorporated under an act "to establish, maintain, and conduct a seminary of learning." Its only business has been the maintenance of such a seminary, with the usual studies pursued. Its expenses are met by the tuition charges, and its real estate is all occupied by the school buildings: *Held*, that its real estate was exempt from taxation under Laws Mich. 1885, p. 176, exempting such real estate of "scientific institutions" as is occupied by them for the purposes for which they were incorporated.— *Detroit Home and Day School v. City of Detroit*, Mich., 43 N. W. Rep. 593.

112. TOWNSHIP OFFICERS—Settlement. — Plaintiff succeeded the defendant as township trustee, and, on the accounting and settlement between them, allowed defendant a certain amount for money overpaid on certain township funds. Plaintiff, in a subsequent settlement with the board of commissioners, was given credit for the amount thus allowed: *Held*, that in the absence of fraud or mistake in the settlement with defendant, and the subsequent settlement with the board of commissioners, plaintiff could not recover from defendant the amount thus allowed him.—*Murphy v. Oren*, Ind., 22 N. E. Rep. 739.

113. VENDOR AND VENDEE—Warranty.—The neglect or failure of the vendee to record his title does not release the vendor of his obligation of warranty.—*Boyer v. Amet*, La., 6 South. Rep. 734.